

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA . Criminal No. 1:16cr265
. .
vs. . Alexandria, Virginia
. December 13, 2017
NICHOLAS YOUNG, . 9:00 a.m.
. .
Defendant. .
.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

VOLUME III

APPEARANCES:

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ALSO PRESENT: SA NICHOLAS CASLEN
NICHOLAS ENNS
FABIAN VERA

(Pages 426 - 737)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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1 OFFICIAL COURT REPORTER:

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401 Courthouse Square
Alexandria, VA 22314
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DIRECT CROSS REDIRECT RECROSS

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WITNESS ON BEHALF OF
THE GOVERNMENT:

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Mo 431 449 454
(Resumed)

6

7 Agent Cameron Siegfried 458 502

8 SA Smith 533 546

9 SA John Sikorski 559 614 626

10 SA John Minichello 628 642
(Recalled)

11 Paul Lee 648 683 684

12 Ian Paul Campbell 688 701

13

14

15 EXHIBITS

16

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18 Nos. 1-101 thru 1-116 461

1-210A 479

19 1-201 thru 1-219 461

1-221 and 1-222 561

20 1-220 528

21 1-701 and 1-702 663

2-101 thru 2-112 563

22 2-116, 2-118 thru 2-123 563

2-125 thru 2-130 563

23 3-100 594

24 3-101 595

3-102 and 3-103 597

25 3-104 thru 3-114, 3-117 thru 3-121, 603

3-115 594

1

EXHIBITS

2

MARKEDRECEIVED

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GOVERNMENT'S:

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P R O C E S S

2 (Defendant present, Jury out.)

3 THE CLERK: Criminal Case 16-265, United States of
4 America v. Nicholas Young. Would counsel please note their
5 appearances for the record.

6 MR. GIBBS: Good morning, Your Honor. John Gibbs,
7 Gordon Kromberg, Evan Turgeon on behalf of the United States,
8 along with Special Agent Nicholas Caslen and Paralegal
9 Specialist Fabian Vera.

10 THE COURT: Good morning.

11 MR. SMITH: Good morning, Your Honor. Nicholas Smith
12 for defendant Nicholas Young, and with me is counsel Linda
13 Moreno.

14 THE COURT: All right. Good morning, counsel.

15 MS. MORENO: Good morning.

16 THE COURT: The jury is here, so we'll get them in to
17 get started. And remember, you have an hour to finish up the
18 cross-examination.

19 (Jury present.)

20 THE COURT: Oh, good, you're changing positions. Do
21 you want to come down? I'm not sure -- you're short. You may
22 not be able to see from where you are. I just won't be able to
23 watch you today, all right. You-all have a seat. You can sit
24 as soon as you're in the box.

Well, good morning, ladies and gentlemen. I always

Mo - Cross

431

1 tell lawyers that when I have a jury that gets to court on
2 time, I know I have a very serious jury, and I want to thank
3 you. Again, I recognize how traffic is, and it was cold out
4 there this morning, and I guess all of your engines started, so
5 that's great.

6 We're going to -- I just want you to know that I have
7 decided to give the lawyers time periods to keep this case on
8 schedule. You know, everything in life has limits. Even our
9 lives have limits. There's no reason why trials shouldn't,
10 either, so people have to put their best evidence on within the
11 time I'm giving them, but I want to get this case to you as
12 quickly as we can.

13 So we're going to proceed, and, Mr. Smith, you're in
14 the middle of your cross-examination.

15 MR. SMITH: Thank you, Your Honor.

16 MO, GOVERNMENT'S WITNESS, PREVIOUSLY AFFIRMED, RESUMED

17 CROSS-EXAMINATION (Cont'd.)

18 BY MR. SMITH:

19 Q. Good morning, Mo.

20 A. Good morning.

21 Q. Mo, I'd like to pick up on where we left off yesterday
22 when the cross-examination was recessed for the evening
23 yesterday.

24 A. Yes.

25 Q. Yesterday, you testified that your agent handler

Mo - Cross

432

1 instructed you to discuss geopolitics with Mr. Young in order
2 to encourage conversation about ISIS. Correct?

3 A. I do not recall.

4 Q. Do you recall mentioning that you would raise the subject
5 of the dictator of Syria, Basher Assad, with Mr. Young in order
6 to discuss ISIS with Mr. Young?

7 A. I do not recall.

8 Q. Did you discuss the Syrian war with Mr. Young in
9 connection with ISIS?

10 A. Yes.

11 Q. And did Mr. Young take an interest in the Syrian war
12 because of the Syrian government's butchery of civilians in
13 that war?

14 A. Yes.

15 Q. And did you continue those conversations with Mr. Young
16 about the war and about how civilians were dying in Syria?

17 A. Yes.

18 Q. I'd like to talk about some of the other ways in which you
19 developed a personal connection with Mr. Young, okay?

20 Mr. Young would go out with you to eat at restaurants, correct?

21 A. Yes.

22 Q. He would buy you meals, correct?

23 A. Yes.

24 Q. You would have many conversations at these restaurants and
25 in social occasions which had nothing to do with terrorism,

Mo - Cross

433

1 correct?

2 A. That happened.

3 Q. It happens on multiple occasions, correct?

4 A. Yes.

5 Q. You would buy him gifts, correct?

6 A. I don't recall.

7 Q. You bought him a Palestinian scarf. Do you remember that?

8 A. Yes.

9 Q. So you do recall.

10 You would share stories about your families, correct?

11 A. Yes.

12 Q. You told him about your grandmother in the West Bank,
13 correct?

14 A. Yes.

15 Q. And that your grandma in the West Bank was not very
16 wealthy and was struggling to get by there, correct?

17 A. I don't recall.

18 Q. And Mr. Young told you about his father, correct?

19 A. Yes.

20 Q. He told you about how, his regrets about how he wished he
21 had gotten to know his father better, correct?

22 A. Yes.

23 Q. And you had multiple conversations about this, correct?

24 A. Correct.

25 Q. Mr. Young told you about his ex-girlfriends and his

Mo - Cross

434

1 romantic relationships in the past, correct?

2 A. Yes.

3 Q. You would have long conversations about girls and dating,
4 correct?

5 A. Yes.

6 Q. Mr. Young told you that one of the reasons why he never
7 went back to Libya after 2011 was that he developed a strong
8 relationship with one girlfriend from Canada, correct?

9 A. Yes.

10 Q. And he discussed with you how after this girlfriend broke
11 up with him, he was very devastated, and you had a long
12 conversation about that, correct?

13 A. Yes.

14 Q. That was in the same week that you decided to go to --
15 pretend to go to Syria, correct?

16 A. I don't recall.

17 Q. Okay. Let's go back to the meetings we were discussing
18 yesterday which you testified about.

19 A. Yes.

20 Q. So you testified about a meeting on September 11, 2014,
21 with Mr. Young, correct?

22 A. I did.

23 Q. And then after that meeting, the next meeting you
24 testified about was not until October, correct?

25 A. Correct.

Mo - Cross

435

1 Q. Okay. But you had some meetings with Mr. Young between
2 that September 11 meeting and the meetings in October, correct?

3 A. All meetings were recorded.

4 Q. I understand. I'm just asking you to confirm that there
5 were some meetings between the September 11, 2014, meeting with
6 Mr. Young and the October 2014 meetings which you testified
7 about yesterday.

8 A. I don't recall.

9 Q. I'd like to hand up a document dated September 23, 2014.
10 It's an FBI summary.

11 THE COURT: When you say all of your meetings with
12 Mr. Young were recorded, what do you mean by that?

13 THE WITNESS: I mean by I was wearing a wire.

14 THE COURT: So they were all -- in your view, they
15 were all audio recorded?

16 THE WITNESS: Yes, ma'am.

17 THE COURT: All right.

18 BY MR. SMITH:

19 Q. So, Mo, if you take a look at that document, do you see
20 that if you -- it's an FBI memorandum reflecting a CHS
21 recording?

22 A. Yes.

23 Q. And can you see on the second page the date of the meeting
24 that it reflects between you and the defendant, Nicholas Young?

25 A. Yes.

Mo - Cross

436

1 Q. Did you testify about that meeting yesterday?

2 A. The little Italian cafe? Yes.

3 Q. You testified about that meeting yesterday, on
4 September 12. You testified yesterday about September 11,
5 2014. I'm asking you if you also testified about September 12,
6 2014, which is -- September 12 is reflected in that FBI
7 memorandum in front of you?

8 A. Yes. I only testified about September 11.

9 Q. Okay. Do you recall your conversation on September 12,
10 2014, with Mr. Young? I'm not asking you to read the document.
11 I'm just asking whether you recall.

12 A. No, I don't.

13 Q. Okay. So you don't recall what happened on that date?

14 A. No.

15 Q. If I asked you to review that document in front of you and
16 refresh your recollection, would you be able to?

17 A. No.

18 Q. Why not?

19 A. Most of it is redacted.

20 Q. Thank you.

21 Now, you testified yesterday about your meeting on
22 October 16, 2014, with Mr. Young, correct?

23 A. Yes.

24 Q. And during that -- do you recall that meeting? Do you
25 recall that meeting? I think it's the little Italian cafe.

Mo - Cross

437

1 That's what you were thinking about on October 16?

2 A. I don't recall the exact location, but --

3 Q. You testified yesterday about your meeting on October 16,
4 2014, right?

5 A. Yes.

6 Q. Who is Shuaib?

7 A. Shuaib is the imam -- or one of the imams at the Sully
8 Mosque.

9 Q. And did Shuaib ever have a conversation with you about
10 your thoughts about going to Syria or overseas?

11 A. Yes.

12 Q. What did Shuaib think about you going to Syria?

13 A. He discouraged it.

14 Q. What did he say to you?

15 A. I don't recall the exact wordings, but --

16 Q. Strongly discouraged it, correct?

17 A. Yes, he discouraged it.

18 Q. And what mosque is Shuaib an imam at?

19 A. The Sully Mosque.

20 Q. That's the mosque that you and Nicholas went to, right?

21 A. Occasionally, he would go there.

22 Q. That's where you met Nicholas, right, Sully Adams?

23 A. The first time? Yes.

24 Q. Okay. So do you recall that on your October 16 meeting
25 with Nicholas Young which you testified about, that Nicholas

Mo - Cross

438

1 Young told you -- he said to you Shuaib would have convincing
2 arguments for not going to Syria. Do you remember that?

3 A. I don't recall.

4 Q. Do you recall that Mr. Young said Shuaib would have very
5 convincing arguments for not going to Syria and that maybe
6 perhaps you should listen to them?

7 A. I do not recall.

8 THE COURT: Again, ladies and gentlemen, this is an
9 example of whatever the lawyer said in that question you cannot
10 accept as evidence if the witness says he doesn't recall it,
11 all right? I just want you to keep that clear.

12 MR. SMITH: Your Honor, I just need one moment.

13 Q. I'm handing up a document that's an FBI memorandum that's
14 a consensual recording on October 16, 2014.

15 Excuse me, I'm looking for -- I'm looking for
16 October 17. Can you give me October 17?

17 Here it is.

18 October 17. There you go.

19 MR. GIBBS: Your Honor, obviously, he can try to
20 refresh the witness with this, but it's not marked at this
21 point, and it's not a transcript. It's a summary of a
22 conversation.

23 THE COURT: Well, it's simply being used to see if it
24 could refresh the memory of the witness. That's all right, but
25 if the witness looks at it and it doesn't refresh anything,

Mo - Cross

439

1 that's it. It doesn't come into evidence.

2 MR. GIBBS: Understood, Judge, but just for the
3 record, it needs to be marked as something so we at least have
4 a record of what was shown to the witness.

5 THE COURT: You have that problem extensively. What
6 number do you want to put on that?

7 MR. SMITH: Let's call this Defense Exhibit 12.

8 THE COURT: I think we have a thousand Exhibit 12s.
9 It's going to make no sense in this record.

10 MR. SMITH: Your Honor, if I may, I'd like to first
11 describe the document to the court reporter, describe the date,
12 the author, hand it to the witness, and then after the witness
13 reviews it, I will explain the -- I will mark the document
14 after I cross-examine the witness.

15 THE COURT: I'm not going to guarantee that this
16 record will ever be accurate.

17 MR. SMITH: Thank you, Your Honor.

18 THE COURT: This is not the way it should be done.

19 MR. SMITH: I'm handing up a document dated
20 October 17, 2014. It's an FBI memorandum drafted by Cameron
21 Siegfried.

22 Q. Mo, let me know when you see the October 17, 2014, date.

23 A. I see it.

24 Q. Okay. Does this memorandum reflect a summary of your
25 recording on October 17, 2014?

Mo - Cross

440

1 THE COURT: The proper question is looking at that,
2 does that refresh your memory?

3 MR. SMITH: I have to ask the question that I'm
4 asking -- it's a very long memorandum, so I asked him -- the
5 question for the witness was do you recall a conversation with
6 Shuaib -- a conversation about Shuaib with Nicholas Young on
7 October 17, 2014?

8 THE WITNESS: I don't recall exactly the date that I
9 had a meeting with Shuaib.

10 BY MR. SMITH:

11 Q. I'm not asking you about your meeting with Shuaib and the
12 date. I'm asking you whether on October 17, 2014, you had a
13 conversation with Nicholas Young about Shuaib.

14 A. I honestly can't recall.

15 Q. Can you turn to page 11, please?

16 A. Okay.

17 Q. Can you review the middle of the page and see if Shuaib is
18 referenced, please?

19 A. I see Shuaib.

20 Q. What does it say there? Does that refresh your
21 recollection --

22 THE COURT: No, no, no.

23 BY MR. SMITH:

24 Q. Does that refresh your recollection, Mo?

25 A. I spoke to Shuaib many times. I can't say that on that

Mo - Cross

441

1 day specifically.

2 Q. I'm not asking you about when you spoke to Shuaib. I'm
3 asking you about whether Nicholas Young said to you on
4 October 17, 2014, that Shuaib would have convincing arguments
5 for not going to Syria and maybe you should not block it out of
6 your mind because he's probably more knowledgeable than you.

7 A. I honestly don't recall.

8 Q. And your, your recollection is not refreshed reviewing the
9 document in front of you? You could just review that page
10 you're looking at, page 11.

11 A. Yes.

12 Q. So your recollection is refreshed?

13 A. Yes.

14 Q. So you do recall that Mr. Young said -- suggested to you
15 on October 17, 2014, that Shuaib would have convincing
16 arguments for not going to Syria?

17 A. Yes.

18 Q. And that maybe you should not block that out of your mind?

19 A. Yes.

20 Q. And that he's -- Shuaib is probably more knowledgeable
21 about you on the subject of whether you should go to Syria?

22 A. Yes.

23 Q. Thank you.

24 You testified yesterday about meetings you had with
25 Mr. Young on October 23 and October 25, 2014, correct?

Mo - Cross

442

1 A. Correct.

2 Q. And you testified a little bit about a meeting you had on
3 October 24, 2014, correct?

4 A. I can't recall exactly.

5 Q. So, so you left the United States and the fictitious
6 identity you've created on October 25, 2014, correct?

7 A. I can't recall, honestly, the exact date.

8 Q. Do you recall the evidence yesterday showing you and
9 Mr. Young in a FedEx store?

10 A. Yes.

11 Q. And, and that was a FedEx -- that was an occasion in which
12 you created e-mails to chat when you left the country?

13 A. Correct.

14 Q. And that was October 25, 2014, correct?

15 A. I would have to refresh my memory.

16 Q. Okay. You had a meeting the day before you left Syria
17 with Mr. Young, correct?

18 A. Yes.

19 Q. And during that meeting, Mr. Young said to you a few
20 things that should have cautioned you about going to Syria,
21 correct?

22 A. I can't recall.

23 Q. Mr. Young said to you, "It's only illegal to take up arms
24 against a U.S. ally," correct?

25 A. Yes.

Mo - Cross

443

1 Q. He said to you, "It's illegal to join a terrorist
2 organization," correct?

3 A. Yes.

4 Q. This is a day before you left for Syria, correct -- or
5 Turkey, rather, correct?

6 A. Yes.

7 Q. He said to you, "There are other groups in Syria that are
8 not illegal terrorist organizations," correct?

9 A. Correct.

10 Q. He said, "If you have an itch to travel to Syria, you
11 might join a group that's not a terrorist group," correct?

12 A. I can't recall.

13 Q. And you asked him, "If Customs stops me and asks me
14 whether -- where I'm going, do I have to tell them?"

15 And Mr. Young said, "Yeah," correct?

16 A. I can't recall.

17 MR. SMITH: So this is a summary, an FBI summary of
18 Mo's consensual recording on October 24, 2014. I'm handing it
19 up to the witness.

20 MR. GIBBS: Judge, we have the same issue. First of
21 all, it's not a marked document. Second, this is a summary of
22 a recording that we played yesterday here in court. The
23 statements that were just referenced we just heard on the
24 consensual audio yesterday.

25 THE COURT: It's normally not wise cross-examination

Mo - Cross

444

1 to simply repeat what went on in the government's case. The
2 jury did as best they could hear this yesterday.

3 MR. SMITH: Your Honor, there were selective clips
4 from this meeting played yesterday. It wasn't the entirety of
5 the conversation, so we are only eliciting parts of the
6 conversation that were not included.

7 Now, this one question about whether Mo would have to
8 tell CBP about coming back to Syria, that was included in the
9 clip played yesterday, but the clip was selective. There were
10 seconds cut out, and, Your Honor, the government has presented
11 what it describes as a transcript of that recording. We would
12 object to that description as a transcript. It is only a
13 selective portion of the recording from that date.

14 THE COURT: Well, we're not going to fight about what
15 is or is not a transcript, but at this point, if there's
16 something in addition to what was played yesterday, that is not
17 inappropriate.

18 MR. SMITH: Thank you.

19 THE COURT: So the objection is overruled.

20 MR. SMITH: Thank you, Your Honor.

21 MR. GIBBS: And, Judge, if I may, it's still an
22 unmarked document.

23 THE COURT: We still have this problem. I'm not sure
24 how it will ever get linked up, but at this point, let's get
25 this moving because of our time limit.

Mo - Cross

445

1 BY MR. SMITH:

2 Q. Do you see the document in front of you dated --
3 reflecting a meeting on October 24, 2014?

4 A. Yes.

5 Q. And this is a summary of your -- of the recording you
6 created during your meeting with Nicholas Young on October 24,
7 2014, correct?

8 A. Yes.

9 Q. Can you turn to page 5, please? And can you review the
10 last line, the last comment on the page that begins with "SD"?
11 "SD" is for Slow Decline, so that is supposed to reflect a
12 summary of Mr. Young's comment.

13 A. I'm looking at it.

14 Q. Okay. Can you review that comment and then review the top
15 of page 6 to about six lines down? You can just let me know
16 when you're finished. Six lines down on page 6 from the top.
17 You don't have to read it. You can just let me know if that
18 refreshes your recollection.

19 A. By reading it, it refreshes my recollection.

20 Q. Okay. So do you recall then on October 24, 2017, this is
21 the day before you left for Turkey, Mr. Young said, "They will
22 put you through the ringer if you go overseas and try to come
23 back"?

24 Do you remember that?

25 A. Yes.

Mo - Cross

446

1 Q. Mr. Young told you, "They will want to know what cities
2 you're in, this and that," right?

3 A. Yes.

4 Q. And you asked him, "Do I have to tell them? Do I have to
5 tell them that?" Right? Meaning do I have to tell them,
6 Customs, where I was going if I go overseas? You asked him
7 that, correct?

8 A. I don't recall.

9 Q. Is your recollection refreshed on reviewing what I just
10 asked you to review, the memorandum in front of you on page 6,
11 the top of the page?

12 A. Not entirely.

13 Q. Not entirely, but he said something to the effect of --
14 you asked him, "I mean, am I going to get in trouble if I try
15 to come back from Turkey or Syria?"

16 A. I don't recall.

17 Q. And didn't Mr. Young say, "Yeah, you're going to go
18 through the ringer"?

19 A. Yes, he did say that.

20 Q. Okay. Now, on the same day, October 24, 2014, the day
21 before you leave for Turkey, Mr. Young admonishes you about
22 something you have to keep in mind if you do go to Syria or if
23 you go to Turkey or anywhere overseas. He gives you a word of
24 advice, correct?

25 A. I don't recall.

Mo - Cross

447

1 Q. He says to you, "You can change your mind," and, "Some
2 people decide not to change their mind out of pride."

3 Do you remember that?

4 A. I do not recall.

5 Q. Can you turn to page 11, and can you review the last
6 comment on page 11, which begins "SD," for Slow Decline?

7 A. That last paragraph, you said?

8 Q. Yeah. Can you review that? And just -- you don't need to
9 read it. Just tell me if that refreshes your recollection.

10 A. Yes, I remember that.

11 Q. So this appears to be in this memorandum, the last comment
12 Mr. Young made to you on October 24, 2014, the day before you
13 went to Turkey, correct?

14 A. Correct.

15 Q. And doesn't Mr. Young tell you that, you know, it's okay
16 if you change your mind about going? Correct?

17 A. Correct.

18 Q. And doesn't he say that what you should basically do is
19 follow your conscience, correct?

20 A. Yes.

21 Q. Hadn't Mr. Young said this to you on a number of occasions
22 in this period of time in September and October 2014: "The
23 most important thing is to follow your conscience"?

24 A. Yes.

25 Q. Mo, your relationship with Nicholas Young lasted between

Mo - Cross

448

1 May 2014 and, if we include the e-mails that you and the agent
2 handler sent from Syria and Turkey, it includes up to August
3 2016, July of 2016, correct?

4 MR. GIBBS: Judge, that's incorrect.

5 THE COURT: Well, more than that, this witness has
6 already said that he's basically out of the situation after he
7 goes to Turkey, so he can't answer that question, so I'm
8 sustaining the objection.

9 MR. SMITH: Okay. I'll just note that yesterday,
10 Mr. --

11 THE COURT: I sustained the objection. You just ask
12 a new question.

13 BY MR. SMITH:

14 Q. So your relationship with Mr. Young then lasted from May
15 2014 to October of 2014, correct?

16 A. Correct.

17 Q. And did you at any point ever see Mr. Young speak with
18 someone who was actually in ISIS, a member of ISIS?

19 A. I can't recall. I can't say whether or not.

20 Q. You don't remember? You don't know, right?

21 A. I don't know.

22 Q. Did you ever witness over these dozens of occasions in
23 which you were having conversations with Mr. Young about these
24 subjects that were in the recordings yesterday, did you ever
25 witness Mr. Young ever try to give material support to ISIS,

Mo - Redirect

449

1 give something material to ISIS?

2 A. Did I witness?

3 Q. Yeah.

4 A. No.

5 Q. So ISIS's involvement in your part of this investigation
6 was fictitious, correct?

7 A. My part?

8 Q. During the time you were with, you were reporting on
9 Nicholas Young -- your agent handler instructed you to report
10 on Nicholas Young between May 2014 and October of 2014,
11 correct?

12 A. Yes.

13 Q. And you testified that you had conversations about ISIS
14 with Mr. Young in that period, correct?

15 A. Correct.

16 Q. But ISIS was never actually involved in any of these
17 conversations or plans or anything of any nature, correct?

18 A. Yes.

19 Q. You never communicated with ISIS, did you?

20 A. No.

21 MR. SMITH: Thank you, Your Honor. That's it.

22 THE COURT: All right.

23 MR. GIBBS: Thank you, Judge.

24 REDIRECT EXAMINATION

25 BY MR. GIBBS:

| | | |
|----|--|-----|
| | Mo - Redirect | 450 |
| 1 | Q. Good morning, Mo. | |
| 2 | A. Good morning, John. | |
| 3 | Q. You were testifying a few moments ago about Shuaib, the | |
| 4 | iman at Sully Mosque, Shuaib, I can't remember his last time. | |
| 5 | Do you recall that? | |
| 6 | A. Yes. | |
| 7 | Q. And you were asked some questions about Shuaib saying | |
| 8 | things to discourage you from going to join ISIS. Do you | |
| 9 | recall that? | |
| 10 | A. Yes. | |
| 11 | Q. And by this point, had you made it clear that that was | |
| 12 | your interest? | |
| 13 | A. Yes. | |
| 14 | Q. Now, when you were asked earlier about these e-mails you | |
| 15 | set up right before you left the country, whose idea was it to | |
| 16 | go set up those e-mails? | |
| 17 | A. It was the defendant. | |
| 18 | Q. And who went when you went to the store to set up those | |
| 19 | e-mails? | |
| 20 | A. The defendant. | |
| 21 | Q. All right. Was Shuaib there with you? | |
| 22 | A. No. | |
| 23 | Q. Was he invited to go with you? | |
| 24 | A. No. | |
| 25 | Q. Did anyone else go with you besides the defendant? | |

Mo - Redirect

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1 A. No.

2 Q. And what was the purpose of setting up those e-mails?

3 A. To maintain communication and to update him about my trip.

4 Q. And your trip to go do what?

5 A. To join ISIS.

6 Q. And at any point when you were setting up those e-mails,
7 did the defendant do anything or say anything to discourage you
8 from going to join ISIS?

9 A. No.

10 Q. Now, you were asked yesterday and today about some of the
11 recordings you made at the instruction of the FBI beginning in
12 July 2014. Do you recall that?

13 A. Yes.

14 Q. And these were consensual recordings of the defendant,
15 right?

16 A. Yes.

17 Q. And yesterday on cross-examination, the defense asked you
18 about one recording that was made earlier, in May of 2014.

19 A. Yes.

20 Q. Do you recall that?

21 And that was a couple of months before the FBI
22 instructed you to start recording?

23 A. Correct.

24 Q. And do you remember yesterday the defense actually played
25 a portion of that recording?

Mo - Redirect

452

1 A. Yes.

2 Q. Now, Mo, what, if any, recordings did you make with your
3 phone before the FBI instructed you to start recording the
4 defendant in July?

5 A. The one in May.

6 Q. And can you explain what happened with that one recording
7 on your phone?

8 A. The defendant wasn't the subject. The -- it was another
9 person. It was Peshwaz, and he made a significant comment that
10 I felt needed to be passed on to Agent John Minichello, so I
11 took it upon myself to record and pass that to John.

12 Q. All right. And you mentioned Peshwaz.

13 Can we pull up 9-106, which is in evidence?

14 Who is this?

15 A. That's Peshwaz.

16 Q. All right. And you testified a moment ago that the reason
17 you made that recording on your phone was that you believe
18 Peshwaz was making a significant statement?

19 A. Correct.

20 Q. And what was Peshwaz talking about?

21 A. Jihad in Afghanistan.

22 Q. And you testified a moment ago that once he made that
23 recording on your phone, you passed it to Special Agent John
24 Minichello, correct?

25 A. Yes.

Mo - Redirect

453

1 Q. All right. What did he tell you about making any
2 recordings without being instructed to do so by the FBI?

3 A. To never do that again.

4 Q. And did you follow that instruction?

5 A. Yes.

6 Q. And finally, one of the recordings you did make at the
7 instruction of the FBI that we heard yesterday was dated
8 September 11, 2014, and the defense asked you about that one.
9 They played a portion that related to Al Baghdadi. Do you
10 recall that?

11 A. Yes.

12 Q. Who is Al Baghdadi?

13 A. Al Baghdadi is the leader of ISIS.

14 Q. And in the portion we heard yesterday the defense played,
15 the defendant made some comments about Al Baghdadi, his
16 pictures looking like a thug or looking like a criminal. Do
17 you recall that?

18 A. Yes.

19 Q. And in that recording you made back in September of 2014,
20 do you remember what the defendant said about a minute and a
21 half after that in that recording?

22 A. I do not recall.

23 MR. GIBBS: Your Honor, we would ask to play, it's a
24 very short clip, I think it's 17 seconds long, it's cued up and
25 ready to go, and this is a portion from Exhibit 6-103-7, and we

Mo - Recross

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1 do have a transcript ready to go as well.

2 MR. SMITH: No objection.

3 THE COURT: All right, it's in.

4 (Government's Exhibit No. 6-103-7 was received in
5 evidence.)

6 MR. GIBBS: Thank you.

7 THE COURT: Do we have the audio?

8 MR. VERA: Yes.

9 (Government's Exhibit No. 6-103-7 excerpt was
10 played.)

11 MR. GIBBS: Thank you.

12 MR. SMITH: Your Honor, three questions.

13 THE COURT: Just one second. He's not finished.

14 Are you done?

15 MR. GIBBS: I am done. Mo, thank you.

16 THE COURT: All right. Go ahead, Mr. Smith.

17 RECROSS EXAMINATION

18 BY MR. SMITH:

19 Q. Mo, after your testimony concluded yesterday on
20 cross-examination when the court recessed, did you discuss your
21 testimony yesterday with the attorneys after the hearing?

22 A. No.

23 Q. You did not, okay.

24 Yesterday you testified that the first time you made
25 a recording of Mr. Young in a meeting with him was July 2014,

Mo - Recross

455

1 correct?

2 A. Correct.

3 Q. And I asked you whether there was any recordings that you
4 had of meetings with Mr. Young before that point, correct?

5 A. Yes.

6 Q. You stated there were none, correct?

7 A. Yes.

8 Q. So your testimony yesterday was false, correct?

9 A. The May recording was not about the defendant.

10 Q. I'm not asking about a May recording. Yesterday, I asked
11 you whether there were any recorded meetings that you had with
12 Mr. Young before July 2014, correct?

13 A. All the audio recordings that were consensual were made in
14 July.

15 Q. No, no, it's a yes or no.

16 MR. GIBBS: Judge, he's attempting to answer the
17 question.

18 THE COURT: Sustained.

19 BY MR. SMITH:

20 Q. I asked you yesterday whether July 2014 -- there were any
21 meetings you had with Mr. Young that were recorded before July
22 of 2014, correct?

23 A. Yeah. You asked me if I had any meetings with the
24 defendant, so it sounded like the defendant alone. That's why
25 I said July.

Mo - Recross

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1 Q. I asked you yesterday whether you had ever recorded a
2 meeting with a target without the permission of your agent
3 handler, correct?

4 A. I don't recall.

5 Q. You said yesterday that you have never recorded a meeting
6 without the permission of your agent handler, correct?

7 A. Correct.

8 Q. Today you are -- it is your testimony that you have
9 recorded a meeting without the permission of your agent
10 handler, correct?

11 A. Yes. In May, yes.

12 Q. So your testimony yesterday was incorrect, right?

13 A. I was saying that the May -- or the recording that was
14 made in May, I did not have his permission to record that
15 meeting.

16 Q. That is your testimony today, correct?

17 A. Yes.

18 Q. Yesterday when I asked you whether you had ever recorded a
19 meeting without the permission of your handler agent, you said
20 no, correct?

21 MR. GIBBS: Judge, that's asked and answered.

22 THE COURT: Sustained.

23 MR. SMITH: Thank you.

24 THE COURT: All right, does anybody anticipate
25 calling this witness again?

Mo - Recross

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1 MR. GIBBS: Not from the government, Judge.

2 THE COURT: How about from the defense?

3 MR. SMITH: No.

4 THE COURT: No? All right.

5 Then thank you for your testimony. You're free to go
6 at this time. Do not discuss your testimony with any witness
7 who has not yet testified.

8 (Witness excused.)

9 THE COURT: All right. Your next witness?

10 MR. GIBBS: Cameron Siegfried, Your Honor.

11 THE COURT: All right, Agent Siegfried.

12 MR. GIBBS: And he does not need the screen to be up
13 while he's testifying.

14 THE COURT: All right. Ladies and gentlemen, because
15 it takes a couple of minutes to reset the courtroom, you're
16 getting a very short -- this is not your long morning coffee
17 break. If you'd just leave the courtroom for a minute, we'll
18 recess for five minutes to reset.

19 (Recess from 9:39 a.m., until 9:44 a.m.)

20 (Defendant present, Jury out.)

21 THE COURT: All right, let's bring the jury in. And
22 we want Agent Siegfried in here.

23 (Jury present.)

24 THE COURT: The agent should come around this way.

25 SA CAMERON SIEGFRIED, GOVERNMENT'S WITNESS, AFFIRMED

Siegfried - Direct

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1 DIRECT EXAMINATION

2 BY MR. GIBBS:

3 Q. Good morning, sir.

4 A. Good morning.

5 Q. Sir, can you please state and spell your name for the
6 record.

7 A. Yeah. It's Cameron Siegfried, C-a-m-e-r-o-n, last name
8 Siegfried, S-i-e-g-f-r-i-e-d.

9 Q. All right. And, sir, your voice is a little soft-spoken,
10 and so sound doesn't always carry that well in here, so make
11 sure to lean forward so the mic can pick you up, if you will,
12 and try to keep your voice up, if you would.

13 A. Sure.

14 Q. And who do you work for?

15 A. The Air Force Office of Special Investigations.

16 Q. And how long have you been in that position?

17 A. About 12 years.

18 Q. And during your time with Air Force Office of Special
19 Investigations, were you assigned to work as a task force
20 officer with the FBI at any point?

21 A. Yes, I was.

22 Q. When was that?

23 A. That was from December 2011 to April of 2016.

24 Q. And where was that that you were assigned to work as a
25 task force officer?

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1 A. The FBI Washington Field Office.

2 Q. And as part of your duties as a task force officer, did
3 you participate in an investigation here in Northern Virginia
4 as co-case agent with Special Agent John Minichello?

5 A. Yes, I did.

6 Q. And were you assigned to that investigation during the
7 time when the CHS Mo supposedly left to go join ISIS?

8 A. Yes, I was.

9 Q. And when was that?

10 A. Initially started around May of 2014.

11 Q. And when did Mo supposedly leave to go join ISIS?

12 A. That was towards the end of October of 2014.

13 Q. And at that time, towards the end of October in 2014, did
14 John Minichello and Mo actually leave the country and travel to
15 Turkey?

16 A. Yes, they did.

17 Q. And did they send several e-mails, I believe it was three
18 in total, to the defendant from Mo's V4Vendetta mail account?

19 A. Yes, that's correct.

20 Q. And after the e-mails that were sent from Turkey, who
21 actually controlled that V4Vendetta e-mail account?

22 A. It was myself and Agent Minichello.

23 Q. And did you and Agent Minichello impersonate Mo when you
24 would send e-mails from that account to the defendant?

25 A. Yes.

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1 Q. Did you receive e-mail from the defendant from his
2 essakobayashi e-mail account?

3 A. Yes.

4 MR. GIBBS: Your Honor, at this point, just in the
5 interests of sort of time and efficiency, if I could, and if
6 there's no objection, we'd like to move in all of the
7 essakobayashi e-mail accounts, which is Exhibits 1-201 through
8 1-219, and we'd like to move in all the V4Vendetta e-mails,
9 which is 1-101 through 1-116, and then I would just go through
10 them with the agent a little more quickly.

11 THE COURT: Any objection?

12 MR. SMITH: To virtually all of the e-mails, we have
13 no objection. We --

14 THE COURT: On your feet, Mr. Smith. On your feet.

15 MR. SMITH: We have an objection to one particular
16 exchange, but for the rest of the e-mails, we have no quarrel.

17 THE COURT: Which one do you have an objection about?

18 MR. SMITH: Can we approach the bench?

19 THE COURT: Just tell me which one so I can see it.

20 MR. SMITH: Your Honor, the, the e-mails are produced
21 in a way where there's long chains, so if we could explain it
22 at the bench --

23 THE COURT: Wait, just give me the number, please.

24 They're all marked.

25 MR. SMITH: Your Honor, they were not produced to the

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1 defense Bates stamped.

2 THE COURT: Am I missing something? How has the
3 government produced these exhibits? I mean, you said --

4 MR. GIBBS: With our exhibit numbers on them, Judge.
5 That's what -- the numbers I just referenced.

6 THE COURT: So 1-201, for example -- it's very
7 specific. It's a two-sentence exhibit. You should be able to
8 tell me of this group which is the one you have a problem with.
9 Just give me the number; I'll look at it.

10 MR. SMITH: Your Honor, we would need five minutes to
11 do that. In the interests of speeding --

12 THE COURT: All right, they're all in. They're all
13 in at this point. Let's go.

14 (Government's Exhibit Nos. 1-101 through 1-116 and
15 1-201 thru 1-219 were received in evidence.)

16 MR. GIBBS: Thank you, Judge.

17 If we could pull up Exhibit 1-104?

18 Q. Now, what is this?

19 A. This is, this is an e-mail from the e-mail account that,
20 that we took over, Mo's e-mail account, to the defendant's
21 e-mail account on November 20 of 2014.

22 Q. And so just to set the stage then, this is one of the
23 e-mails that you and Special Agent Minichello drafted and sent
24 to the defendant?

25 A. That's correct.

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1 Q. And in the first line of that e-mail, you wrote, "I made
2 it to dawlah!" What does "dawlah" refer to?

3 A. "Dawlah" is an Arabic term for state. It's typically used
4 among ISIS supporters and other travelers and, you know, common
5 among ISIS facilitators, recruiters, to describe the Islamic
6 State.

7 Q. And so why didn't you just simply say, "Hey, I made it to
8 ISIS," instead of saying, "I made it to dawlah"?

9 A. It's not, it's not common vernacular for how these
10 individuals talk, and it wasn't consistent with, with the
11 legend and the security protocols that they had set up prior
12 to, to Mo initially traveling.

13 Q. And then if you look about four lines down in that e-mail,
14 you said, "The brothers look like they are making progress in
15 Derna."

16 Where is Derna?

17 A. Derna is a, a town in northeastern Libya.

18 Q. And what was the defendant's connection to Libya?

19 A. He had attempted to travel there -- or traveled there at
20 least once and then attempted a second time.

21 Q. And, Special Agent, in the course of the investigation,
22 was the FBI able to determine where Young went when he sent
23 e-mails to Mo?

24 A. Yes.

25 Q. And how did you learn that?

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1 A. We took the IP address off the e-mail header, took the
2 date and time stamp and did a subpoena to -- well, we took the
3 IP address, identified it resolved to a FedEx corporate office
4 in Texas, and then from there subpoenaed FedEx about an hour or
5 two time frame before and after the e-mail was sent to get
6 video from the FedEx store.

7 Q. And how did you know which FedEx store to subpoena or to
8 seek those video records from?

9 A. At the time, we didn't. We assumed he likely used the
10 closest FedEx store to his, to his residence.

11 Q. And were you correct in that?

12 A. Yes.

13 MR. GIBBS: If we could pull up -- actually, these
14 are not in yet, but we have a number of still photos from the
15 FedEx surveillance videos, and we would ask, again in the
16 interests of speed and efficiency, if we could, to move in
17 Exhibit 7-202A through 7-216A. These are all FedEx stills.

18 MR. SMITH: No objection.

19 THE COURT: All right, they're all in.

20 (Government's Exhibit Nos. 7-202A through 7-216A were
21 received in evidence.)

22 BY MR. GIBBS:

23 Q. And before we get to that, I just -- one question I had on
24 the previous exhibit, 1 -104, when you talked in that e-mail
25 about the brothers look like they are making progress in Derna,

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1 who are the brothers you were referring to making progress in
2 Derna?

3 A. "The brothers" was just a reference to other members of
4 the Islamic State.

5 Q. In Libya?

6 A. Yes.

7 Q. Thank you.

8 All right, now if we can pull up the first still,
9 it's 7-202A.

10 And what is this?

11 A. This is a still image of the defendant entering the FedEx,
12 FedEx office store.

13 Q. All right, it's not real clear. Are you able to make out
14 the date there at all?

15 A. It appears to be December 12 of 2014.

16 Q. Well, hold that thought. If we can go to Exhibit 1-201,
17 see if that helps you at all with the date?

18 A. Sorry. It appears to be December 17 of 2014.

19 MR. GIBBS: All right. And if we could pull up
20 1-201?

21 THE COURT: You've got to blow that up. The jury
22 can't read that.

23 MR. GIBBS: If we can enlarge the top section of
24 that?

25 Q. How long after receiving the e-mail saying that Mo had

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1 made it to dawlah and that the brothers were making progress in
2 Derna did the defendant respond?

3 A. It was approximately three weeks to a month.

4 MR. GIBBS: All right. In the first paragraph there
5 at the top, Mr. Vera, if we can highlight the sentence six
6 lines down where the defendant wrote, "I have been following
7 the news of the region"?

8 Q. Now, Special Agent, in the course of your correspondence
9 with the defendant, how common was it for him to say that he
10 was following the news related to where Mo was located?

11 A. It was fairly common.

12 MR. GIBBS: And then if we could next move to
13 Government Exhibit 1-202?

14 MR. SMITH: No objection.

15 THE COURT: It's in.

16 MR. GIBBS: And if we can blow up the top there?

17 Q. What is this e-mail?

18 A. This is an e-mail from the defendant to Mo's e-mail
19 account controlled by us on December 17, 2014.

20 Q. So the same date as the last e-mail?

21 A. Yes, it is.

22 Q. And what did the defendant say in the second e-mail about
23 any pics that confirm that he had read the previous e-mails
24 that were sent from Turkey?

25 A. He, he discussed the Blue Mosque and a -- the Libyan

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1 consulate that we had sent pictures of -- or actually, that
2 Agent Minichello had sent pictures of in previous e-mail.

3 Q. Thank you.

4 All right, next if we can go to 1-203?

5 MR. SMITH: No objection.

6 THE COURT: These are all in already.

7 BY MR. GIBBS:

8 Q. Yeah. What is, what is this e-mail?

9 A. This is an e-mail from the defendant to Mo's e-mail
10 account controlled by us on December 26, 2014.

11 MR. GIBBS: And can we highlight that first sentence
12 that begins with the words, "Your brother"?

13 Q. Based on a review of this e-mail, could you determine
14 which brother the defendant was referring to in that first
15 sentence?

16 A. Yes.

17 Q. Who was that?

18 A. That was Hisham Hall.

19 Q. How can you tell that was Hisham Hall?

20 A. The description was consistent with, with Hisham's
21 consistent travel back and forth to school at the time. He
22 was, he was attending school on the West Coast, and he came
23 into town in Northern Virginia a few weeks before, before Mo
24 had notionally left, and it was -- again, it was just
25 consistent with the description of Hisham Hall.

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1 Q. And that was based on your experience working on this
2 investigation?

3 A. That's correct.

4 Q. Thank you.

5 Next, if we can go to Exhibit 1-105? And if we can
6 zoom in on the e-mail -- yeah, you've got it.

7 So what is this?

8 A. This is an e-mail from Mo's e-mail account controlled by
9 us to the defendant on January 7, 2015.

10 MR. GIBBS: And if we could, can we highlight the
11 portion in that e-mail from Mo's account, it's ten lines down,
12 that begins with the line, "People are big on Kik and twitter"?
13 And if we can highlight all the way down to where it says,
14 "talk to you sometime"?

15 Q. Now, Special Agent, you put a reference in there, in your
16 e-mail to the defendant to the Jordan pilot. What was that a
17 reference to?

18 A. The Jordan pilot was a reference to a Jordanian pilot that
19 was participating in, in bombings of basically ISIS positions
20 in Syria and had ejected and was, was captured by ISIS in late
21 December of 2014.

22 Q. And what does the word "we" refer to where you wrote,
23 "since we picked up the Jordan pilot"?

24 A. "We" was just a reference to ISIS, the group that Mo was
25 with.

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1 Q. And in your e-mails to the defendant, did you frequently
2 reference events that were reported in the media?

3 A. Yes, we did.

4 Q. And was this an example of that?

5 A. It was.

6 MR. GIBBS: All right, if we could turn to Exhibit
7 1-204? And if we can blow up the top portion?

8 Q. What is this exhibit?

9 A. This is an e-mail from the defendant to Mo's e-mail
10 account on January 8, 2015.

11 Q. And keeping January 8, 2015, in mind, if we can go quickly
12 to Exhibit 7-204A? So what is 7-204A?

13 A. This is a still image of the defendant in the FedEx office
14 store on January 8 of 2015.

15 Q. And that's the store that you subpoenaed the surveillance
16 records from?

17 A. Yes, that's correct.

18 MR. GIBBS: All right, let's go back to the e-mail
19 from January 8, if we could.

20 Mr. Vera, if you can zoom up on the top, and if you
21 can then highlight -- sorry, it's 1-204. And if you can zoom
22 in on the first -- the second and third lines, beginning
23 with, "If you are unable to write or get injured"?

24 Q. Now, how did the defendant's use of the word "commander"
25 in this e-mail fit into what you were telling him that Mo was

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1 doing overseas?

2 A. Yeah, it appeared to be a reference that he, he understood
3 Mo to be with ISIS and, obviously, under a commander was the
4 way I read it.

5 MR. GIBBS: And then if we can go down seven lines,
6 if we can highlight the sentence that begins, "Ha, yep, heard
7 about the rat pilot"?

8 Q. Special Agent, what was the status of the Jordanian pilot
9 at this point?

10 A. At this point, the, the status at least reported in the
11 media was unknown.

12 Q. But was anyone widely reported to be holding the Jordanian
13 pilot?

14 A. Yes. He -- at that point, the ISIS was widely reported to
15 have captured that pilot.

16 Q. And at some point after January 8 of 2015, what did ISIS
17 ultimately do to the Jordanian pilot?

18 A. There were videos, obviously, published, I believe, in
19 early February of 2015. The pilot was put in a cage and burned
20 alive.

21 Q. And was that event widely reported?

22 A. Yes, it was.

23 Q. And then if possible, can we go down, I'd like to
24 highlight the portion -- the section that starts nine lines
25 down, where the defendant, it begins, "Not sure if you got the

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1 news there yet," and goes down about five lines all the way
2 to, "according to people in the building."

3 Do you see that?

4 A. Yes, I do.

5 Q. All right. And did you recognize what that was a
6 reference to?

7 A. Yes. It appeared to be a reference of the attack on the
8 *Charlie Hebdo* newspaper in Paris.

9 Q. And can you describe that attack a little bit, exactly
10 what, what occurred?

11 A. Yes. I believe a couple individuals --

12 MR. SMITH: Objection, Your Honor. I believe the
13 witness is reading from a document on the witness stand.

14 THE COURT: You do need to recall from your own
15 memory, without looking at anything.

16 THE WITNESS: Yeah.

17 THE COURT: All right.

18 THE WITNESS: Yeah. I believe a couple individuals
19 opened fire on a French newspaper, resulted in, you know, maybe
20 a dozen deaths.

21 BY MR. GIBBS:

22 Q. All right, thank you.

23 Next if we can go to Government Exhibit 1-106 and
24 pull that up? And can we highlight the sentence 13 lines down
25 that begins, "I heard about france"?

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1 And while we're pulling that up, can you explain what
2 that e-mail is, who it's from and who it's to?

3 A. Yes. This is an e-mail from Mo's e-mail account to the
4 defendant on January 29, 2015.

5 Q. And so this is one that you and Special Agent Minichello
6 drafted and sent to the defendant?

7 A. Yes, that's correct.

8 Q. And in the highlighted portion there, when, when you said
9 that there are many brothers from there over here who seem so
10 happy -- well, actually, let me -- yeah. So you talked about
11 France, said there are many brothers from over here who seem so
12 happy. When you used the term "over here," what did you mean
13 for that to refer to?

14 A. "Over here" was just a reference to Syria, Iraq, any
15 territory controlled by ISIS.

16 Q. Thank you.

17 Next if we could pull up Government Exhibit 1-205?
18 What is 1-205?

19 A. This is an e-mail from the defendant to Mo's e-mail
20 account on February 3, 2015.

21 Q. All right. Keeping that February 3 date in mind, if we
22 can pull up first 7-205A and then 7-205B?

23 Which, which exhibit is this?

24 A. This is a still image of the defendant in the FedEx office
25 store, in his police uniform, on February 3, 2015.

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1 Q. And that's 7-205A, correct?

2 A. Yes, that's correct.

3 Q. And then let's look at 7-205B. And what is 7-205B?

4 A. This is a second still image of the defendant in his
5 police uniform on February 3, 2015, in the FedEx office store.

6 Q. And you said it's a photograph of the defendant in his
7 police uniform. Who did he work for at that time?

8 A. He worked for the Washington Metro Transit Authority.

9 Q. Thank you.

10 Now, if we can move to Government Exhibit 1-206?

11 What is this document?

12 A. This is an e-mail from the defendant to Mo's e-mail
13 account on February 18, 2015.

14 Q. All right. And again, with that February 18, 2015, date
15 in mind, if we could pull up 7-207A and then 7-207B?

16 What is 7-207A?

17 A. This is a still image of the defendant entering the FedEx
18 office on February 18, 2015.

19 Q. And how about 7-207B?

20 A. This is a second image of the defendant leaving the FedEx
21 office store on February 18, 2015.

22 Q. And that's the date that the previous e-mail we had on the
23 screen was sent, correct?

24 A. That's correct.

25 Q. Now, if we could go to Government Exhibit 1-107? If we

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1 can blow -- yeah, thank you.

2 Now, what is 1-107?

3 A. It's an e-mail from Mo's e-mail account to the defendant
4 on March 2, 2015.

5 MR. GIBBS: Mr. Vera, if we could highlight the
6 sentence eight lines down that begins with the words, "When we
7 are in Raqqah"?

8 Q. Now, Special Agent, where is Raqqah?

9 A. Raqqah is in Syria.

10 Q. And what's the significance of Raqqah as it relates to
11 ISIS?

12 A. At the time, that was basically considered their, their de
13 facto headquarters.

14 Q. So essentially, the capital of the Islamic State?

15 A. That's correct.

16 Q. And as part of this e-mail that was sent to the defendant
17 on March 2, 2015, was a photograph also included with the
18 e-mail?

19 A. Yes.

20 MR. GIBBS: Can we pull that up?

21 Q. And what is this a photograph of?

22 A. It's a photograph of a neighborhood in Raqqah.

23 Q. All right. And what was, what was the reason of including
24 it with the e-mail?

25 A. More or less just the reason was to provide additional

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1 information to the defendant that, that showed that Mo was in,
2 Raqqah.

3 Q. Thank you.

4 And next if we can turn to Government Exhibit 1-207?
5 If we could pull up the e-mail at the top, please? Okay.

6 And what is 1-207?

7 A. This is an e-mail from the defendant to Mo's e-mail
8 account on April 10, 2015.

9 MR. GIBBS: All right. And, Fabian, if we can
10 highlight the entire last paragraph of that e-mail?

11 Q. Now, do you see in that last paragraph where the defendant
12 said, "If you come across anymore libyan brothers"?

13 A. Yes, I do.

14 Q. All right. Based on what you were telling the defendant,
15 where would Mo be located if he came across any more Libyan
16 brothers?

17 A. In Syria and Raqqah specifically.

18 Q. All right, thank you.

19 Next if we can go to Government Exhibit 1-208? And
20 if we can zoom in on the top of that, what is 1-208?

21 A. That is an e-mail from the defendant to Mo's e-mail
22 account on April 25, 2015.

23 MR. GIBBS: All right. And next if we can turn to,
24 quickly to Government Exhibit 7-209 A and 7-209B?

25 What is 7-209A?

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1 A. This is a still image of the defendant entering the FedEx
2 office on April 25, 2015.

3 Q. And then can we go to 7-209B? What is this exhibit?

4 A. And that is another still image of the defendant leaving
5 the FedEx office on April 25, 2015.

6 Q. And that's the same day as the previous e-mail we just
7 looked at?

8 A. That's correct.

9 MR. GIBBS: Next if we could turn to Government
10 Exhibit 1-209?

11 Q. What is 1-209?

12 A. That is an e-mail from the defendant to Mo's e-mail
13 account on May 8, 2015.

14 Q. All right. And that's short enough, I'm not going to ask
15 you any questions beyond that. We'll move on to the next one.

16 Can we go to Exhibit 1-108? If we could zoom in on
17 the -- as much as possible on that e-mail?

18 What is 1-108?

19 A. That is an e-mail from Mo's e-mail account to the
20 defendant on May 10, 2015.

21 MR. GIBBS: And, Fabian, if it's possible, can we
22 zoom in on the first paragraph to start with? And can we --
23 yeah, that's good.

24 Q. And, Special Agent, do you see the section about four
25 lines from the bottom that starts with, "We were back in the

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1 city helping to train some of the new brothers"? Do you see
2 where it goes all the way down to the end of that paragraph?

3 A. Yes.

4 Q. Now, when you talked about when we were back in the city,
5 what city did you intend for that to refer to?

6 A. That was a, again, a reference to Raqqah.

7 Q. And in May of 2015, who controlled Raqqah?

8 A. ISIS did.

9 Q. And when you wrote in that paragraph that -- when you
10 talked about getting places for food and to relax and you said
11 that is harder now that we went east, what is going east a
12 reference to?

13 A. Going east was a, was a reference to Iraq, and
14 specifically later in Anbar province.

15 Q. And is that a province in Iraq?

16 A. Yes.

17 Q. And what was the reason about including the reference
18 going to east?

19 A. It was consistent with what ISIS was, was doing at the
20 time. They were, they were attempting to, you know, keep and
21 gain additional territory in the Anbar province.

22 Q. And was the push into Anbar province, was that an event
23 that was widely reported in the media?

24 A. Yes, it was.

25 MR. GIBBS: And next if we can pull up in the -- can

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1 you zoom in on the second paragraph, Fabian? And if possible,
2 can we highlight the first four sentences of that second
3 paragraph, ending with "shahid"?

4 Q. Now, Special Agent, this was included in the e-mail, and
5 it talked about the brothers in Texas. What was that a
6 reference to?

7 A. The brothers in Texas was a reference to an attack on a
8 Prophet Muhammad cartoon contest in Garland, Texas.

9 Q. And in your e-mail to the defendant, you wrote that we
10 cheered when we heard the brothers became shahid. Who did you
11 intend for "we" to refer to when you said that we cheered?

12 A. "We" was a reference to ISIS.

13 Q. What does it mean to become shahid?

14 A. "Shahid" is a common term for a martyr.

15 Q. Thank you.

16 Now, if we can next turn to Government Exhibit 1-210?
17 And what is Government Exhibit 1-210?

18 A. This is an e-mail from the defendant to Mo's e-mail
19 account on May 13, 2015.

20 Q. May 13, 2015. So can we pull up Exhibits, let's start
21 with Exhibit 7-211A. What is 7-211A?

22 A. That's a still image of the defendant entering the FedEx
23 office on May 13, 2015.

24 Q. And then can we turn to 211B, please?

25 A. And that's a second still image of the defendant entering

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1 the FedEx -- or actually appears to be leaving the FedEx office
2 on May 13, 2015.

3 Q. All right, thank you.

4 And you testified earlier that when you checked the
5 IP information on the e-mails from the defendant, they came
6 back to that FedEx store?

7 A. It actually returned to FedEx office corporate store, but
8 there was no way to actually determine the specific store. The
9 only way we were able to do that was to get video surveillance
10 of the time frame of when he actually sent the e-mails.

11 Q. Okay. And this was a FedEx store near his house?

12 A. Yes, it was.

13 MR. GIBBS: All right, let's go back to the e-mail,
14 if we could, 1-210. And if we can zoom in on that e-mail at
15 the top, please?

16 Q. And what did the defendant's reference in his e-mail to
17 Mo's account, saying -- talking about the "Texas thing"
18 indicate to you as far as whether he had read your prior
19 e-mail?

20 A. He appeared to be referencing the, you know, the reference
21 to the attack that we had discussed in the previous e-mail.

22 MR. GIBBS: And can we highlight next that entire
23 second paragraph in there?

24 Q. Now, with regards to the defendant's reference there to
25 news in *The Post* about a U.S.-trained army and a Saudi-funded

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1 umbrella group getting aimed towards the brothers soon, were
2 you able to review any news stories that were consistent with
3 what the defendant's described there?

4 A. Yes, I was.

5 Q. All right. I'm not going to pull this up yet, but I'd
6 like you to take a look at Government Exhibit 1-210A. Do you
7 have that before you?

8 A. Yes, I do.

9 Q. All right, what is 1-210A?

10 A. It is a *Washington Post* article.

11 Q. And just generally, what is it about?

12 A. Yeah, it basically discusses the U.S. efforts to train
13 Syrian rebels to counter ISIS.

14 MR. GIBBS: All right. And, Judge, we would move for
15 the admission of 1-210A at this point.

16 MR. SMITH: Objection. Hearsay.

17 MR. GIBBS: Judge, we're not offering it for the
18 truth of the matter asserted. It's what the defendant is
19 reading about.

20 THE COURT: Overruled. It's in.

21 (Government's Exhibit No. 1-210A was received in
22 evidence.)

23 MR. GIBBS: Thank you.

24 So if we could publish that to the jury, please?

25 Q. And in the previous e-mail the defendant wrote, he talked

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1 about the news in *The Post*. Who actually published this
2 article?

3 A. *The Washington Post*.

4 Q. And what is the date on this article, at least -- yeah,
5 the date on this one?

6 A. It's May 7, 2015.

7 Q. So six days before the defendant's e-mail?

8 A. Yes.

9 Q. All right. And in the third paragraph of that news story,
10 who does it say that this program is aimed at countering?

11 A. ISIS or ISIL.

12 Q. Thank you.

13 Next if we could turn to Government Exhibit 1-211?

14 Maybe we can -- can you just highlight the top portion?

15 What is 1-211?

16 A. It's an e-mail from the defendant to Mo's e-mail account
17 on June 13, 2015.

18 Q. What is the subject of the e-mail from the defendant to
19 Mo's e-mail account?

20 A. Subject was "Need advice."

21 MR. GIBBS: All right. And if we could briefly pull
22 up Exhibits, let's start with 7-212A?

23 Q. What is 7-212A?

24 A. It's a still image of the defendant in the FedEx office
25 store on June 13, 2015.

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1 Q. And then how about 7-212B?

2 A. It's a still image of the defendant leaving the FedEx
3 office on June 13, 2015.

4 Q. Thank you. Now, if we can go back to Exhibit 1-211?

5 That's the e-mail with the subject "Need advice."

6 And can we -- Mr. Vera, can we zoom in on the second
7 paragraph there? And can you then highlight the last four
8 lines, beginning with, "Okay, now as to my question"?

9 Do you see that, Special Agent?

10 A. Yes.

11 MR. GIBBS: If we can go to, zoom in on the last
12 paragraph? We have to sort of do this step by step. And can
13 we then highlight the, the sentence three lines down in that
14 paragraph that begins, "Unfortunately I have enough flags on my
15 name"?

16 Now, in the e-mails that the defendant sent to you,
17 Special Agent, how would you describe his level of security
18 consciousness?

19 A. He seemed to be fairly security conscious and cognizant
20 of, careful of what he sent.

21 MR. GIBBS: And then staying with the e-mail, can we
22 highlight the sentence nine lines down that starts, "If not,
23 could you ask your commanders"?

24 Q. Special Agent, what was the significance of the defendant
25 using the word "commanders" in his e-mail to you?

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1 MR. SMITH: Objection.

2 THE COURT: We've already had that issue come up once
3 before. He's already answered what "commanders" means, so I'm
4 sustaining the objection. It's cumulative.

5 MR. GIBBS: That's fine, Judge.

6 And next, if we can go farther down in that
7 paragraph, I want you to highlight the section 13 lines down
8 that begins, "I wanted to go to the one country I was in
9 before," and ends with, "the guys that you were with that have
10 a presence there." So it's about five lines.

11 Q. Now, when the defendant talked about "the one country I
12 was in before," did you know what that was a reference to?

13 A. It appeared to be a reference to Libya.

14 Q. And when he said that some issues arose with them, "unless
15 they pledged to your guys since I saw them last," based on what
16 you were telling the defendant, who were Mo's guys?

17 A. Mo's guys were ISIS.

18 Q. All right, next if we could turn to Government Exhibit
19 1-109? What is 1-109?

20 A. It's an e-mail from the -- from Mo's e-mail account to the
21 defendant on June 21, 2015.

22 MR. GIBBS: And can we zoom in on the third
23 paragraph, Fabian? And can you highlight the two sentences
24 four lines down that begin, "If you decide to leave, be
25 careful," and ends with, "it was for my tour"?

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1 Q. Now, Special Agent, in the earlier e-mail, the defendant
2 had asked about getting advice from Mo's commanders about
3 possibly moving money overseas. Do you recall that?

4 A. Yes.

5 Q. And here is the response that, that was drafted and sent
6 to him. Why didn't you encourage the defendant about moving
7 his money overseas with the help of Mo's commanders?

8 A. You know, we just didn't think it was consistent with the
9 legend that had been built around Mo. We hadn't asked for
10 anything up to that point, and we thought pushing him, you
11 know, to send money, you know, at that point didn't make any
12 sense and, you know, wanted to let him know sending money via
13 Western Union or a straight wire or anything like that was
14 probably a bad idea.

15 Q. All right, thank you.

16 Next if we could go to Exhibit 1-110? What is 1-110?

17 A. That's an e-mail from Mo's e-mail account to the defendant
18 on July 14, 2015.

19 Q. Right. And if you drop down from there, it's sort of a
20 little tricky to read, if you drop down, if we could go to the
21 next header there, the one dated Sunday, June 21, 2015, that's
22 the one I want to ask you about. What is that?

23 A. That is an e-mail from Mo's e-mail account to the
24 defendant on June 21, 2015.

25 Q. All right. And so June 21, 2015, when you take a look at

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1 7-213A, what is 7-213A?

2 A. This is a still image of the defendant in the FedEx office
3 on June 21, 2015.

4 Q. And then what is 7-213B?

5 A. That's a still image of the defendant leaving the FedEx
6 office on June 21, 2015.

7 Q. All right, thank you.

8 Now if we could go back to the June 21 e-mail, which
9 is Exhibit 1-110? And, Fabian, can we zoom in on that first
10 paragraph that starts, "V, thanks for the advice"? And then
11 can we highlight the sentence two lines down that begins, "And
12 if there is a way to leave my email address"?

13 Special Agent, do you see in that e-mail where the
14 defendant said: If there is a way to leave my e-mail address
15 with a trusted commander so I may be alerted if something
16 happens to you? Do you see that?

17 A. Yes.

18 Q. All right. Besides this "trusted commander," how many
19 other people did the defendant authorize Mo to share his e-mail
20 account with?

21 A. No one.

22 Q. Thank you.

23 If we can go to Exhibit 1-213? If we could just zoom
24 in on the whole e-mail? It's not very long.

25 What is 1-213?

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1 A. It's an e-mail from the defendant to Mo's e-mail account
2 on July 1, 2015.

3 Q. All right, we'll come back to it in just a second, but if
4 we could pull up 7-214A? And what is 7-214A?

5 A. It's a still image of the defendant in the FedEx office
6 store on July 1, 2015.

7 Q. Thank you.

8 Now, let's go back to the 1-213, and stay zoomed in
9 on it, if we can. And can we highlight the last couple of
10 sentences at the bottom, starting with, "If you come across any
11 brothers from that city," and take it all the way to the end?

12 Now, in the defendant's e-mail to Mo's account, he
13 said that people from the Abo Salem Suhada Brig. is who I was
14 with mostly. Who first brought up the Abo Salem Suhada Brig.
15 in your e-mails to the defendant?

16 A. The defendant did.

17 Q. Thank you. Next if we can go to Government Exhibit 1-214?
18 And what is 1-214?

19 A. That is an e-mail from the defendant to Mo's e-mail
20 account on July 20, 2015.

21 Q. Thank you.

22 And, Fabian, if we can zoom in on the third paragraph
23 of that July 20 e-mail, the one that starts with, "Yeah, been
24 well over a month"?

25 And then four lines down, the defendant

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1 writes, "Yeah, I'm not sure who they are with now but assume it
2 is the same and they have a different leadership the brothers
3 where you are."

4 Where were you consistent in your e-mails in
5 indicating that Mo was?

6 A. With ISIS, in ISIS-controlled territory in either Syria or
7 Iraq.

8 MR. GIBBS: And then below -- let's see. Then below
9 that, if we can pull up the part that begins, "Inshallah the
10 divisions will be solved," and ends with, "like minded"?

11 Q. Now, in the e-mail -- in the defendant's e-mail to Mo's
12 account where he wrote about how he remembered these as being
13 the best of brothers and "like-minded" and how he wanted to see
14 the "divisions solved and the brothers united," what was your
15 understanding of which brothers this referred to?

16 A. Seemed to be a reference to resolving the divisions
17 between ISIS and, you know, the group he's referencing.

18 Q. And what group was that that he was referencing?

19 A. The brothers he was with.

20 Q. In where?

21 A. In Libya.

22 Q. Thank you.

23 Next if we can pull up Government Exhibit 1-112? And
24 if we can zoom in on the top of that e-mail?

25 And if you can just indicate what Government Exhibit

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1 1-112 is?

2 A. It's an e-mail from Mo's e-mail account to the defendant
3 on October 1, 2015.

4 MR. GIBB: Fabian, can we highlight the first
5 sentence of that second paragraph that begins, "Things here are
6 ok but everyone is talking about Russia"?

7 Q. Special Agent, what was that in reference to?

8 A. That was a reference to Russia's involvement in carrying
9 out air strikes supporting the Assad regime.

10 Q. And was that event widely reported in the media?

11 A. Yes, it was.

12 MR. GIBBS: And then further down, five lines down,
13 can we highlight the sentence that begins, "My Canadian friend
14 told me"?

15 Q. Now, when you wrote in that e-mail about a deal being
16 struck to split up Sham, can you explain what "Sham" means?

17 A. Yes. "Sham" was just a general reference to Syria.

18 Q. All right, thank you.

19 Next if we can turn to Government Exhibit 1-216? And
20 if we can zoom in on that e-mail at the top?

21 What is 1-216?

22 A. Sorry, I'm just --

23 Q. That's okay. I jumped ahead on you a little bit.

24 Special Agent, it is on -- we will pull it up on the
25 screen as well if that's easier for you.

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1 A. Okay.

2 Q. I know you have to sort of toggle back and forth, but that
3 may be the best way to do it.

4 A. Yeah, it's an e-mail from the defendant to Mo's e-mail
5 account on October 13, 2015.

6 MR. GIBBS: And if we could highlight that first full
7 paragraph that starts, "Yes, it seems like the west"?

8 Q. In the defendant's e-mail to Mo's account, when he talked
9 about, "everyone needs to join under one banner to repel them,"
10 what was your interpretation of what that meant?

11 A. That seemed to be a reference to, my interpretation was,
12 the other groups fighting the Assad regime, including, you
13 know, al-Nusra Front and the Syrian rebels.

14 Q. Thank you.

15 Next if we can turn to Government Exhibit 1-218?

16 That will be up on your screen in a moment. If we can zoom in
17 on that?

18 Special Agent, would you -- could you tell what
19 brother the defendant was referring to in this particular
20 e-mail?

21 A. Yes. It appeared to be another reference to Hisham Hall.

22 Q. And how could you tell this was a reference to Hisham
23 Hall?

24 A. The references to him studying and, you know, I think the
25 defendant had referenced at one point that he was going back to

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1 his home country, not explicitly saying Morocco, but that he
2 had been studying and kind of moving back and forth, and it was
3 consistent with, with Hisham Hall.

4 Q. And is Hisham Hall from Morocco?

5 A. Yes.

6 Q. Okay. All right, thank you.

7 Next if we could turn to Government Exhibit 1-113?
8 And if we can zoom in on the top just so it's a little more
9 easy to make out?

10 What is 1-113?

11 A. That's an e-mail from Mo's e-mail account to the defendant
12 on November 15, 2015.

13 MR. GIBBS: All right. And, Fabian, if you could
14 highlight the entire second paragraph, zoom in on it?

15 Q. Now, in the second paragraph of that e-mail to the
16 defendant, you talked about the news in Paris. What was that a
17 reference to?

18 A. That was a reference to the multiple attacks that went on
19 in Paris, I believe it was a few days prior to that.

20 Q. And who claimed responsibility for those Paris attacks?

21 A. ISIS did.

22 Q. All right, thank you.

23 Now, Special Agent Siegfried, by this point in
24 November of 2015, the FBI and, you know, specifically you and
25 John Minichello had been using the V4Vendetta e-mail account to

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1 pose as Mo and to communicate with the defendant as though Mo
2 was with ISIS, correct?

3 A. That's correct.

4 Q. And around this point in the investigation, did the FBI
5 make a decision to approach the defendant directly?

6 A. Yes.

7 Q. And when was that?

8 A. That was in, I believe December 3 was the first, first
9 time.

10 Q. You said the first time. How many interviews did the FBI
11 conduct with the defendant?

12 A. At that point, it was December 3, and I believe December 5
13 he was interviewed a second time.

14 Q. And who, who were the agents who conducted the interviews
15 with the defendant? And keep in mind, one of the agents will
16 be referred to -- well, is not to be referred to in his real
17 name. Do you know what his pseudonym is?

18 A. Yes.

19 Q. Okay. Who were the agents who conducted those two
20 interviews?

21 A. Agent Caslen and Agent Smith.

22 MR. GIBBS: Thank you, sir.

23 Judge, at this point, this agent is one we did want
24 to break up as well because we'd like to present evidence of
25 the interviews at this point, but he will have a little bit of

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1 testimony after that related to some additional e-mails, but
2 with the Court's indulgence, we'd like to finish our questions
3 now, we can either go into cross now or the defense can do
4 their entire cross once he's completed all of his testimony,
5 but the next witness we would call would be Special Agent
6 Smith, who will need to testify behind the screen about the
7 December 2015 interviews.

8 THE COURT: I think it's -- the jury can, can parse
9 this together. I think when a witness is on the stand, we
10 should try to get all of the testimony out. Let's finish with
11 this witness.

12 MR. GIBBS: That's fine, Judge.

13 Q. All right. So, Special Agent, in terms of the interviews
14 conducted by the FBI in December of 2015, after those two
15 interviews occurred in early December, what did that do to the
16 defendant's e-mail communications to Mo's account?

17 A. The, the communication dropped for about, about a month,
18 month or so, maybe two. I'd have to look.

19 Q. Okay. And after a certain amount of time passed without
20 getting any e-mails from the defendant, what did you do?

21 A. We sent another e-mail.

22 MR. GIBBS: And if we could pull up Government
23 Exhibit 1 -219? And let's blow up the e-mail at the bottom, if
24 we could.

25 Q. And what was the date of the e-mail at the bottom?

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1 A. This was an e-mail from Mo's e-mail account to the
2 defendant on January 16 of 2016.

3 Q. Is it January 16 or January 14?

4 A. Sorry, January 14, 2016.

5 Q. Okay. And what was the subject line of your e-mail to the
6 defendant?

7 A. There is no subject.

8 MR. GIBBS: And, Fabian, can we highlight the last
9 three sentences of that e-mail, starting with, "I think the
10 kuffar know I have made it somehow"?

11 Q. Now, what did you intend to convey to the defendant by
12 using the term "kuffar"?

13 A. "Kuffar" mean disbelievers, the government, FBI.

14 Q. And did the defendant respond to this e-mail?

15 A. Yes, he did.

16 MR. GIBBS: All right. And before we jump up to the
17 top of that, if we could pull up Government Exhibit 7-216A?

18 Q. What is 7-216A?

19 A. It's a still image of the defendant in the FedEx office on
20 February 16, 2016.

21 MR. GIBBS: Okay. And let's go back to the previous
22 exhibit, which is 1-219. And can we zoom in on the top of that
23 now? Actually, the "From" and "To" information, if we could
24 start with that?

25 Q. All right, you testified a moment ago that your e-mail on

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1 January 14 had no subject. What was the subject of the
2 defendant's e-mail to you on February 16, 2016?

3 A. "Yeah, they were asking about you."

4 Q. And approximately how long after your e-mail to the
5 defendant did he wait to respond?

6 A. It was approximately a month.

7 MR. GIBBS: And, Fabian, next could we zoom in on the
8 first paragraph of the defendant's e-mail? And can we
9 highlight the first three lines of that first paragraph? Yeah.
10 The first three sentences, I guess.

11 And then, Fabian, farther down in that same
12 paragraph, can you highlight the last four lines of that
13 paragraph, beginning with, "So again I was being careful"?

14 Q. Now, in that first paragraph, the defendant talks about
15 Tor and some of these other apps to communicate on. Who first
16 brought up the idea of these other devices such as Tor and
17 different apps that in the defendant's word would be "secure"?

18 A. The defendant.

19 Q. And you testified a moment ago that the subject line of
20 this particular e-mail was, "Yeah, they were asking about you."

21 Can we next zoom in on the second paragraph, Fabian?
22 And if we could, could we highlight the first seven lines of
23 that paragraph that end with, "at least 6 goons in teams of two
24 that were going around"?

25 Special Agent, is this where the defendant described

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1 in his e-mail being questioned by the FBI?

2 A. Yes.

3 Q. And when the defendant said in that e-mail that they
4 wanted your phone, e-mail, Facebook info, were those the sorts
5 of questions he was asked, actually asked by the FBI in
6 February of 2015?

7 A. Yes, he was.

8 Q. And when the defendant told the person he believed was Mo
9 that he had said that Mo had gone on vacation and to visit
10 family, how did that compare with the story that the defendant
11 and Mo had come up to explain Mo's trip before he left?

12 A. It was -- it's fairly consistent.

13 MR. GIBBS: And then, Fabian, if we could -- at the
14 end of that paragraph, if we could highlight the last three
15 lines -- the last sentence, I guess, but it begins, "I read in
16 the papers"?

17 Q. Now, in that last line, when the defendant used the
18 term "the state," did you recognize that reference?

19 A. Yes, a common reference to Islamic State.

20 Q. And with regards to the defendant saying that he read in
21 the papers about the state being able to make new passports and
22 then saying, "inshallah they could furnish you with necessary
23 documents in another name to travel regionally," were you able
24 to review any news reports prior to February 16, 2016, that
25 were consistent with what the defendant described?

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1 A. Yes, I was.

2 Q. All right. I'd like you to take a look at Government
3 Exhibit 1-219A, and we're not going to pull it up. I think, I
4 think it should be there in your stack because that's not in
5 evidence yet.

6 A. I don't believe it is.

7 Q. I think it should be attached to --

8 THE COURT: It's not in the Court's book, either.
9 219A is not.

10 MR. GIBBS: Oh, it's not? All right, we may, we may
11 just come back and clean that up later, Judge.

12 Q. All right, Special Agent, if you could turn to Government
13 Exhibit 1-220? And we can pull that up on the screen, so you
14 maybe able to see it quicker that way.

15 And can you just highlight the top for us?

16 All right. So you testified a moment ago about
17 getting an e-mail from the defendant dated February 16, 2016,
18 with the subject, "They were asking about you." Did the
19 defendant then send a second e-mail about 20 minutes later on
20 that same date?

21 A. Yes.

22 Q. And that one is "Subject: "Re: Salam," correct?

23 A. Yes.

24 MR. GIBBS: Fabian, can we zoom in on the third
25 paragraph? All right, thank you. And can we highlight the

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1 section that begins a couple lines down, begins, "But yeah...I
2 have heard," and goes all the way down to, "group you are with
3 not divided"?

4 Q. Now, in this e-mail, when the defendant said, "the only
5 way forward now is with the group you are with not divided,"
6 what group were you consistent in indicating Mo was with?

7 A. ISIS.

8 Q. And then next, Special Agent, if we could turn to
9 Government Exhibit 1-115?

10 THE COURT: 1-115?

11 MR. GIBBS: Yes. 1-115, I'm sorry. Pull it up, and
12 let's highlight the top portion.

13 Q. And what is Government Exhibit 1-115?

14 A. That is an e-mail from Mo's e-mail account to the
15 defendant on March 5, 2016.

16 MR. GIBBS: All right. And, Fabian, if we can zoom
17 in on that second paragraph of the e-mail at the top? And then
18 if you can highlight the section, it starts three lines in
19 with, "The brothers that I have been helping," and then take it
20 all the way down to the end of that paragraph?

21 Q. Now, Special Agent, did you tell the defendant in this
22 e-mail about another way or a new way that the two of you could
23 communicate?

24 A. Yes.

25 Q. And what was the new method you could use to communicate?

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1 A. We had, we had basically described an encrypted messaging
2 application called Threema that was widely being adopted by
3 ISIS.

4 Q. And is that the reason you suggested it to the defendant?

5 A. Yes, one of the reasons.

6 Q. All right, thank you.

7 Next if we can go to Government Exhibit 1-116? And
8 if we could just sort of zoom in on the entire paragraph, I
9 think we should be able to bring it up.

10 What is 1-116?

11 A. That's an e-mail from Mo's e-mail account to the defendant
12 on April 18, 2016.

13 MR. GIBBS: And, Fabian, can we zoom in on the entire
14 second paragraph, and then can we highlight the first three
15 lines that start with, "Although Allah," and ends with, "make
16 hijrah to Khilafah now"?

17 Now, what did you intend to convey to the defendant
18 by telling him, "I am blessed to be living in dawlah"?

19 A. Just a reference to living under the Islamic State.

20 MR GIBBS: And then, let's see, below that, can we
21 highlight the sentence two lines down that begins, "I mentioned
22 in last email," and ends with, "because more secure"?

23 Q. Now, what did you intend to convey in that sentence by
24 using the term "hijrah"?

25 A. I was basically kind of conveying that Mo was in the

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1 process of helping other facilitators move Westerners,
2 potential recruits into ISIS, and "hijrah" is just another word
3 for, you know, traveling. It's common among ISIS supporters.

4 Q. Right. And you talked about helping facilitators recruit
5 people to ISIS, and in the e-mail message, you talked about how
6 the Threema app would help brothers make hijrah.

7 A. Sure.

8 Q. How was it that this Threema app would help brothers make
9 hijrah?

10 A. It was a -- it was a secure way to communicate with, with
11 potential recruits, being able to set up one account and solely
12 communicate with that one person in order to facilitate the
13 travel to the Islamic city.

14 Q. Right. So was the idea that you would have a secure way
15 for one recruiter to talk to one potential fighter that
16 wouldn't be compromised?

17 A. Yes.

18 Q. And then after saying that and telling the defendant he
19 should text you on the Threema app because it's more secure,
20 you gave him an ID. What was that ID?

21 Can we highlight that?

22 A. Yeah. That was UNTDSKA7.

23 Q. And what does that Threema ID allow a user to do?

24 A. Typically, the, the user or the recipient, if I sent that
25 user ID to somebody else, I mean, they typically would have to

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1 know that ID in order to communicate with me. It's a very
2 specific -- it's not tied to an e-mail or a phone number or
3 anything else.

4 Q. And just as they would have to know that ID to communicate
5 with you, would you have to know their ID to communicate with
6 them?

7 A. Yes.

8 Q. Okay. Now, Special Agent Siegfried, at the beginning of
9 your testimony, you testified about being detailed to the FBI
10 as a task force agent, and I believe your testimony was your
11 time as a task force agent ended in April 2016, correct?

12 A. That's correct.

13 Q. And this e-mail is dated April 18, 2016?

14 A. Yes, it is.

15 Q. So was this the end of your time with the FBI?

16 A. Yes, it was.

17 Q. And did you go back to the Air Force soon that after that?

18 A. Yes, I did.

19 MR. GIBBS: Okay. Just a moment.

20 Yeah, there's one -- if I can just go back very
21 briefly to one exhibit, it's 1-220. If you could pull that up,
22 Fabian? And if you could zoom in on the third paragraph that
23 starts, "Yeah, saw Paris"?

24 Now, this was the e-mail dated February 16, 2016, the
25 "Re: Salam" e-mail from defendant's e-mail address. Do you

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1 see that.

2 A. Yes.

3 Q. All right. When defendant talked about yeah, saw Paris,
4 and he gave a description of what happened, how did that relate
5 to something you had referenced in an earlier e-mail?

6 A. I believe in a -- I'd have to look at it, but in an
7 earlier e-mail, I believe there was a reference to the
8 Charlie -- well, I'm sorry, give me one second.

9 This was a reference to the attacks in Paris in
10 November.

11 MR. GIBBS: Okay. Thank you.

12 And, Judge, there was one exhibit that we didn't have
13 a paper copy of, but I do have a -- I have it on the machine,
14 and -- well, actually, let me do this: Can I just hand this up
15 to the witness and then authenticate it and move it in?

16 THE COURT: Is it a newspaper article?

17 MR. GIBBS: It is.

18 THE COURT: All right. Defense have seen it?

19 MR. GIBBS: Yep.

20 Q. All right, what's that exhibit number, Special Agent?
21 1-219A?

22 A. Yes, that's correct.

23 Q. All right, what is that exhibit?

24 A. It is a Reuters news article. The title is "Islamic State
25 Can Make Fake Syrian Passports."

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1 Q. All right. And a few moments ago, you testified about an
2 e-mail from the defendant where he said, "I read in the papers
3 that the state has the ability to make new passports." Was
4 that at least one article that was consistent with what the
5 defendant described?

6 A. Yes.

7 MR. GIBBS: Your Honor, if we could move that into
8 evidence and publish it, please?

9 MR. SMITH: We object to it to the extent that it's
10 being used to establish -- we object to the evidence to the
11 extent it's being used to establish the truth of the contents
12 in the article but --

13 THE COURT: Well, the right objection and the one
14 I'll sustain is there's no evidence that an American-based
15 person would have read a British news article. The other one
16 was *Washington Post*. The defendant is from this area; that's
17 not an unreasonable assumption.

18 MR. SMITH: That's correct, Your Honor.

19 THE COURT: So I will sustain that objection. The
20 exhibit is not in.

21 MR. SMITH: Okay.

22 MR. GIBBS: Thank you, Judge. I think that's all
23 we've got.

24 Thank you, sir. I believe the defense will have some
25 questions for you.

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1 THE COURT: All right. Cross-examination?

2 CROSS-EXAMINATION

3 BY MR. SMITH:

4 Q. Good afternoon, Agent Siegfried.

5 A. Good afternoon.

6 Q. So you've testified today that you began e-mailing the
7 defendant with some of your colleagues from, allegedly from
8 Syria but not actually in Syria around October 2014, correct?

9 A. I began around November of 2014.

10 Q. Oh, you began around November 2014, but the, the
11 individual, the agent pretending to be Mo began e-mailing
12 Nicholas Young allegedly from Syria or Turkey in October of
13 2014, correct?

14 A. Yes. I believe they, they sent those together.

15 Q. And the first e-mail that was sent from Turkey from the
16 character pretending to be Mo was in October -- on October 27,
17 2014, correct?

18 A. I don't have that in front of me but --

19 Q. That's Government Exhibit 1-101.

20 Can we put that up?

21 A. Yes, this appears to be the first e-mail.

22 Q. Okay. Do you recall whether the individual, the agent
23 pretending to be Mo asked Nicholas Young -- do you recall
24 whether the agent pretending to be Mo indicated in this e-mail
25 on October 27, 2014, that Mo was heading to Syria?

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1 A. I'm sorry, I don't understand the question.

2 Q. Can you refresh your recollection by looking at this
3 document, this e-mail dated October 27, 2014?

4 MR. GIBBS: Judge, just to be clear, this is not one
5 of the exhibits he authored or testified about.

6 THE COURT: I would think you have a better witness
7 to ask this of, Mr. Smith. Again, your time is somewhat
8 limited.

9 MR. SMITH: Your Honor, Mr. Siegfried just testified
10 about the e-mails on October 27 and October 29. They're
11 Government Exhibits 1-101 and 1-102. He was a witness for
12 these --

13 THE COURT: Look, if you want to ask it, I'm going to
14 allow you to do it, but this is probably not your best witness
15 since he said he was not in on the project at that point. You
16 have another agent who's coming back here.

17 MR. SMITH: Your Honor, that's not clear to us yet at
18 this point from the government's explanations to us, but we
19 will proceed quickly.

20 THE COURT: All right.

21 BY MR. SMITH:

22 Q. So in this e-mail on October 27, 2014, the agent
23 pretending to be Mo does not indicate that he would be
24 traveling to Syria, correct?

25 MR. GIBBS: Judge, first of all, that misstates the

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1 evidence because Special Agent Minichello testified he and Mo
2 drafted the e-mail, and the exhibit speaks for itself.

3 THE COURT: You've reserved Minichello to come back.

4 MR. GIBBS: Correct.

5 THE COURT: Whether you call him or the defense calls
6 him, it's up to whoever you want -- however you want to do it,
7 but the point is he is the better witness rather than having
8 somebody who didn't author the article try to talk about what
9 it means. So I'm going to sustain --

10 MR. SMITH: We can --

11 THE COURT: I'm sustaining the objection. Move on,
12 sir.

13 BY MR. SMITH:

14 Q. Agent Siegfried, the agent pretending to be Mo had
15 e-mailed Nicholas Young three times in a row in October and
16 November, before Nicholas Young responded to those e-mails, to
17 the agent pretending to be Mo, correct?

18 A. I believe it was three times.

19 Q. And the first time that the agent pretending to be Mo
20 e-mailed Nicholas Young was October 27, 2014, correct?

21 A. Yes.

22 Q. And Mr. Young did not respond until December 17, 2014,
23 correct?

24 A. That's correct.

25 Q. Now, Agent Siegfried, you testified about an e-mail which

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1 is Government Exhibit 1-204, dated January 8, 2015, correct?

2 That's Government Exhibit 1-204, and it referenced a Jordanian
3 pilot?

4 A. Yes.

5 Q. And it's your testimony that this e-mail indicated
6 Mr. Young's support for -- or interest in ISIS, as indicated by
7 the fact that he was referencing a Jordanian pilot burning in
8 this e-mail, correct?

9 A. My understanding from, from reading the e-mails, he was
10 referring to the Jordanian pilot that we had referenced in a
11 previous e-mail.

12 Q. At this point in time on January 8, 2015, there came a
13 time when the FBI investigated an account called a LiveLeak
14 account. Are you familiar with that LiveLeak account?

15 A. No.

16 MR. SMITH: Okay. This is a government -- this is a
17 document for the witness dated June 4, 2015.

18 MR. GIBBS: Can we take a look?

19 MR. SMITH: Sure.

20 THE COURT: Has the government seen it?

21 MR. SMITH: They produced it to us, Your Honor.

22 MR. GIBBS: Your Honor, there's a couple issues with
23 this. One, again, it's not a marked exhibit, but more
24 importantly, the question was whether he was familiar with the
25 defendant's LiveLeak account. The defendant -- the witness

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1 said no. Now, this appears to be an attempt to refresh him on
2 that, which since the answer is he doesn't know anything about
3 the LiveLeak account --

4 THE COURT: Well, let him look at it and see if it
5 refreshes his recollection.

6 BY MR. SMITH:

7 Q. I can -- actually, Agent Siegfried, are you familiar with
8 SSA Bryan Vorndran?

9 A. Yes.

10 Q. And who is he?

11 A. He's the -- he was at the time the squad supervisor.

12 Q. And what was his role in this case?

13 A. Managing cases. That's his job.

14 Q. So did you work -- is it accurate to say you worked under
15 SSA Vorndran on this Slow Decline investigation?

16 A. Yes.

17 Q. And were you familiar with other aspects of the Slow
18 Decline investigation?

19 A. On the peripherals. I mean, I knew generally about the
20 general gist of the investigation.

21 Q. So there's a memo in front of you, and it's dated June 14,
22 2015, correct?

23 A. Yes.

24 Q. And is that an FBI memorandum?

25 A. Yes, it is.

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1 Q. And is it a memorandum that is purporting to summarize
2 Mr. Young's comments on at Web site called LiveLeak?

3 MR. GIBBS: Judge, it's either going to refresh his
4 recollection or it's not.

5 THE COURT: Right, right, right.

6 Have you ever seen that before?

7 THE WITNESS: I don't recall seeing this specific
8 memorandum, but seeing the Düsselkamp, I vaguely remember that
9 as an account, but I don't recall the contents of the LiveLeak
10 account.

11 THE COURT: All right.

12 BY MR. SMITH:

13 Q. Do you recall whether the counterterrorism section
14 conducted an analysis of Mr. Young's LiveLeak comments?

15 A. They may have. I -- to my recollection, I don't know.

16 Q. Okay. I'm handing up a former government exhibit marked
17 8-508, which the government removed right before trial from its
18 exhibit list.

19 THE COURT: Show it first to counsel.

20 MR. GIBBS: Judge, again, we object. This is a
21 witness who's testified he's not familiar with the LiveLeak
22 information. This is, appears to be a screen shot related to
23 that. We are calling witnesses later in this case who have
24 personal knowledge of that. This witness clearly does not.

25 THE COURT: You're using up your time, Mr. Smith, on

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1 stuff that doesn't appear to be --

2 MR. SMITH: Your Honor, this is, this is impeachment
3 evidence because it concerns --

4 THE COURT: Well, just show it to the witness then --

5 MR. SMITH: Okay. Thank you.

6 THE COURT: -- and ask your question.

7 MR. SMITH: Thank you.

8 Q. This is a document that was formerly marked Government
9 Exhibit 8-508.

10 THE COURT: Now, what is the question?

11 BY MR. SMITH:

12 Q. Now, the question is do you see -- do you see this as a
13 screen shot from the Web site LiveLeak?

14 MR. GIBBS: Objection.

15 THE COURT: That's it. That's all you're going to
16 ask.

17 MR. SMITH: No, I'm just --

18 THE COURT: But what happens is even though I tell
19 the jury and I know they're going to try very hard to put out
20 of their minds statements that counsel is making, now you're
21 practically testifying, because this is a witness who has said
22 he had a short-term involvement in this investigation. He has
23 said that he does not know these other peripheral issues.

24 Agent, in looking at that document, do you know
25 anything about that?

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1 THE WITNESS: I personally do not recall. I -- now
2 that I've seen the memorandum, I do recall there was a LiveLeak
3 account, but I don't recognize the screen shots, no.

4 THE COURT: All right. Then I'm sustaining the
5 objection. Move on to some other topic.

6 BY MR. SMITH:

7 Q. So, Agent Siegfried, is it accurate to say that between
8 October 2014 and until about June 2016, agents pretending to be
9 Mo were e-mailing Mr. Young continuously during that period
10 from the alias of Mo?

11 A. Yes, that's correct.

12 Q. So these agents continued to have conversations with
13 Mr. Young under the Mo alias throughout this period, but they
14 never arrested him, correct?

15 A. That's correct.

16 Q. Mr. Young remained on the police force during all of these
17 communications, correct, in Washington, D.C.?

18 A. That's correct.

19 Q. You have not testified that any of the comments in these
20 exchanges are in any way criminal, correct?

21 MR. GIBBS: Judge, there's no basis for that.

22 THE COURT: Sustained.

23 MR. GIBBS: Thank you.

24 BY MR. SMITH:

25 Q. You testified about a May 10, 2015, e-mail which was

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1 marked Government Exhibit 1-108, correct? And it referenced
2 going east. The alias pretending to be Mo said he was going
3 east. Do you recall that?

4 A. That's correct.

5 Q. Do you know whether Mr. Young knew what the alias Mo was
6 referring to when he said "going east"?

7 MR. GIBBS: Judge, calls for speculation.

8 THE COURT: Sustained.

9 BY MR. SMITH:

10 Q. In the same e-mail, you reference -- Mo, the alias Mo,
11 references a Texas attack in the May 10, 2015, e-mail. Do you
12 recall that?

13 A. Yes.

14 Q. Do you have any -- do you have any personal knowledge that
15 the defendant understood what you were referring to in that
16 e-mail?

17 MR. GIBBS: Same objection, Judge.

18 THE COURT: Sustained.

19 BY MR. SMITH:

20 Q. Agent Siegfried, do you have any knowledge of whether the
21 defendant speaks Arabic?

22 A. I believe he may speak limited Arabic. I'm not sure.

23 Q. You're not sure. You don't know. Okay.

24 You reference a *Washington Post* article dated May 7,
25 2015, in connection with that later e-mail from Mr. Young on

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1 May 10, 2015. Do you recall that *Washington Post* article?

2 A. Yes.

3 Q. Do you have any evidence that Mr. Young reviewed that
4 article?

5 MR. GIBBS: Judge, again, calls for speculation.

6 THE COURT: Sustained.

7 BY MR. SMITH:

8 Q. Now, you testified about a December 17, 2014, e-mail
9 marked GX-1-202, and it was an e-mail from an agent pretending
10 to be the Mo alias from Turkey which attached some photographs
11 of the mosque in Turkey. Do you recall that?

12 A. Yes.

13 Q. Why did you send those, those mosque photos to Mr. --

14 MR. GIBBS: Judge, this witness, the testimony is
15 that he did not send that. It goes to the --

16 BY MR. SMITH:

17 Q. Why did the agent pretending to be Mo send the pictures of
18 Turkey to Mr. Young?

19 THE COURT: Wait, wait, wait. We've already heard
20 that previously, all right?

21 MR. GIBBS: It's cumulative.

22 MR. SMITH: It's actually -- Your Honor, if I may?

23 THE COURT: What is -- do you have an understanding
24 as to why that was done? Either you do or you don't.

25 THE WITNESS: Yes.

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1 THE COURT: All right. I believe he can testify as
2 to what his understanding is, all right?

3 MR. SMITH: Thank you, Your Honor.

4 THE COURT: What is your understanding as to why
5 those photographs were sent?

6 THE WITNESS: My understanding was to show exactly
7 what they had discussed previously before Mo had left, that he
8 would travel to Turkey under the guise of a tour, and he would
9 take photos while he was there to support that he was actually
10 there.

11 BY MR. SMITH:

12 Q. Didn't your Mo -- you're informant Mo's agent handler,
13 correct?

14 A. Yes.

15 Q. Okay. Didn't Nicholas once tell Mo that he downloaded a
16 picture of the Blue Mosque at work and he liked looking at it?

17 A. I, I don't recall that.

18 Q. Okay. You testified that there was a June 21, 2015,
19 e-mail marked Government Exhibit 1-109, and Mr. Gibbs asked
20 you, "Why didn't you ask him to send Mo money in June 2015?"
21 Do you remember that question from Mr. Gibbs?

22 A. Yes.

23 Q. And your response was, "It would have been inconsistent
24 with the legend that Mo had created," correct?

25 A. Yes.

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1 Q. And that was in June 2015, correct?

2 A. Yes, I believe so.

3 Q. Isn't it true that you had decided the investigation was
4 dragging at that point? Isn't it true that the case agents
5 pretending to be Mo in June 2016 had said this case
6 investigation is slow, and Slow Decline --

7 MR. GIBBS: Objection, Judge. This is our prior
8 standing objection to the motivation of other agents, not this
9 agent, and information that was not contained in the e-mails.
10 If it didn't make it into the e-mails, it's not relevant.

11 MR. SMITH: Your Honor, the relevance of these
12 communications is the purpose of the testimony elicited from
13 Cameron Siegfried is to show that the defendant had a
14 predisposition to support ISIS. If there are documents from
15 the government's own agents indicating that things are slow
16 because they are not finding the predisposition they want, this
17 is relevant testimony.

18 MR. GIBBS: Judge, first of all, this is the -- this
19 is the issue we discussed at the bench previously.

20 THE COURT: Well, we should be at the bench now.

21 MR. GIBBS: Thank you.

22 (Bench conference on the record.)

23 MR. GIBBS: So, Judge, this -- I believe on the first
24 day of the trial, we discussed the issue about opening doors,
25 and this is the issue. If they want to get into this whole

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1 idea of why the government was very concerned here --

2 THE COURT: Wait a minute. I'm hearing noise in the
3 courtroom. What's going on?

4 The clerk is speaking to the jurors. Hold on a
5 second.

6 Is there a problem with the jurors?

7 THE CLERK: No. Just need to check in.

8 THE COURT: Okay. Go ahead.

9 MR. GIBBS: Okay. So this is that issue related to
10 opening the door. If they want to open the door to the idea of
11 why the agents were very concerned and why they did certain
12 things, then, you know, those doors are going to be opened.

13 The problem here, too, is this is not -- as I
14 understand it, these are not communications by this witness, so
15 it doesn't go to his motivation, so --

16 MR. SMITH: Your Honor, we believe his name is
17 redacted --

18 THE COURT: Just a second. I keep hearing the --
19 what is the jury talking about?

20 All right, go ahead.

21 MR. SMITH: May I explain the relevance of the
22 documents?

23 THE COURT: Go ahead.

24 MR. SMITH: Okay. So, Your Honor, Mr. Siegfried
25 testified that the reason he did not ask Nicholas Young to send

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1 money to Syria was because it would have been inconsistent with
2 the legend, and I believe that -- I understand the purpose of
3 Mr. Gibbs' testimony, and I, and I think it's relevant because
4 it shows that we didn't -- the reason the government did not
5 ask him to commit the crime that they later asked him to commit
6 is not because he didn't have the predisposition, but it would
7 have been inconsistent with the legend that Mo had created for
8 his background, but if Your Honor looks at these
9 communications, you'll see that even internally, the agents
10 believed that -- they said they needed to hit the case with a
11 defibrillator to get it going.

12 This is not about the government's mindset. This is
13 about one party is taking the position that the defendant had a
14 predisposition to support terrorism at this point. If the
15 government takes the same, an internally inconsistent position,
16 we're allowed to raise the fact that the party making this
17 argument has argued internally the opposite.

18 Your Honor, if I may, there's one more comment that,
19 that is *Brady* in this case. There's a July 2016 e-mail to the
20 lead case agent saying, "All, maybe Slow Decline is being
21 overly cautious," in response to their request that he send
22 more e-mails to Mo in Syria.

23 So we're not introducing this evidence to show what
24 the government thought, but if an opposing party is taking a
25 position with respect to the defense's predisposition at a

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1 certain point and it has issued inconsistent statements on that
2 predisposition, we're entitled to inquire.

3 THE COURT: Well, first of all, I'm not at all
4 convinced that that is correct, but the second problem you have
5 is the door being opened now to almost all of the concerns that
6 the FBI had about your client because there's so many -- so
7 much smoke in this case, and we're trying to keep as much of
8 that out, but I think it just opens the door completely to
9 everything, because they were concerned about the white
10 supremacist stuff, concerned about radical, other radical
11 issues, they found ammunition. These are all things that it
12 opens up.

13 So I'm going to go ahead and continue my earlier
14 ruling that this is not relevant to the core issues in this
15 case. The motivation of the government in this case and the
16 fact that they were frustrated, if they were, and they weren't
17 getting enough, is not relevant to the issues. So I've made my
18 ruling. You'll have to live with it. Thank you.

19 (End of bench conference.)

20 THE COURT: We're going to have our break in five
21 minutes, folks, because that's about the normal time to take
22 our mid-morning break.

23 Go ahead, Mr. Smith.

24 BY MR. SMITH:

25 Q. Mr. Siegfried, you testified about an e-mail from the

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1 alias Mo to Mr. Young on July 1, 2014. It was marked
2 Government Exhibit 1-213, and it concerned the Abu Salim
3 Martyrs Brigade.

4 Do you remember that e-mail?

5 A. Is that the 2015 e-mail?

6 Q. It's 7/1/2015, Government Exhibit 1-213. It references
7 Abu Salim Martyrs Brigade.

8 A. Yes.

9 Q. This e-mail was sent after Mr. Young returned from Libya,
10 not before, correct?

11 A. Yes.

12 Q. In fact, at this time, you had concluded there was no
13 evidence Mr. Young had joined the terrorist group in Libya,
14 correct?

15 MR. GIBBS: Objection, Judge.

16 THE COURT: What's the basis of the objection?

17 MR. SMITH: And more --

18 THE COURT: Wait a minute. I'm trying to hear from
19 Mr. Gibbs.

20 MR. SMITH: Not the documents that Your Honor just
21 ruled on. There are distinct documents indicating that at the
22 time --

23 THE COURT: Wait, wait, wait.

24 MR. GIBBS: Wait. The question was the witness had
25 concluded.

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1 THE COURT: Just stop.

2 Folks, start your break now, all right? And I'll
3 have you back here, please, at 11:30, all right? Thank you.

4 (Jury out.)

5 THE COURT: All right. Now, let me hear the question
6 you want to ask the witness.

7 MR. SMITH: So, Your Honor, there was a government
8 exhibit marked 1-213, and it was an e-mail.

9 THE COURT: I have it in front of me, all right.

10 MR. SMITH: July 2015. And in that e-mail, Mr. Gibbs
11 elicited from the witness his opinion that this was
12 referencing, this Abu Salim Martyrs Brigade comment was
13 referencing a terrorist group in Libya, and, Your Honor, at the
14 point that this e-mail was sent, we have some evidence produced
15 in discovery indicating that the counterterrorism section
16 investigation into Mr. Young had no evidence that this Abu
17 Salim Martyrs Brigade was a terrorist group, was active in the
18 area of Libya where Mr. Young was.

19 So -- and why is this relevant? Because the
20 government is eliciting this -- these conversations about Abu
21 Salim Martyrs Brigade to establish the point that Mr. Young had
22 a predisposition to support terrorism at this point, but there
23 was no evidence at this time that, that this group had anything
24 to do with terrorism, and, in fact, the government acknowledged
25 as much internally.

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1 Mr. Siegfried was a part of this investigation.

2 MR. GIBBS: And, Judge, if I could respond quickly?

3 THE COURT: Yes.

4 MR. GIBBS: Because the testimony was misstated. The
5 e-mail was from the defendant saying, "The group I was with was
6 Abu Salim Martyrs Brig.," B-r-i-g-period. My only question to
7 the agent was, "Who first brought up the Abu Salim Martyrs
8 Brigade?"

9 And he said, "The defendant," and I moved on from
10 that.

11 So I didn't ask him anything about the nature of the
12 group or what the FBI believed about the group, which isn't
13 relevant anyway.

14 The e-mail speaks for itself. It's the defendant's
15 statement. He volunteered that information to the person he
16 believed was Mo. I didn't touch it beyond just pointing out
17 that the agent and the FBI didn't bring that up at all. The
18 defendant brought it up himself, and that's the extent of the
19 testimony.

20 THE COURT: That's how I recall the testimony.

21 MR. SMITH: And, Your Honor, the only -- the
22 relevance of eliciting that comment at all is to establish
23 Mr. Young's predisposition to materially support terrorism.

24 THE COURT: But it's your client who put the
25 statement in the e-mail. The government didn't. That's the

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1 whole point. Your client in his words includes the
2 statement, "People from the Abo Salem Suhada Brig. is who I was
3 with mostly. I know there has been some problems there where
4 they are, but they are good brothers."

5 That's it.

6 MR. SMITH: Would Your Honor agree that if it were --
7 if the Court could take judicial notice of the fact that Abu
8 Salim Martyrs Brigade is not a terrorist group hypothetically,
9 would Your Honor find that testimony relevant in this case
10 about Mr. Young commenting about the Abu Salim Martyrs Brigade?

11 THE COURT: Oh, I, I think it's clearly relevant to
12 this case. It shows among other things that your client has
13 been in a part of the world where groups of radical activity
14 are working. I'm not going to get into taking judicial notice
15 of something like that. I don't have any information before me
16 one way or the other, but I think this is a line of questioning
17 for this witness in particular that's not going anywhere.

18 So as I said, I'm going to sustain that objection.

19 MR. GIBBS: Right. I should just note for the
20 record, Judge, we will call a witness, our expert, who will be
21 able to testify about Abu Salim Martyrs Brigade. This witness
22 just doesn't have the basis to do that.

23 THE COURT: All right.

24 MR. GIBBS: So thank you.

25 MR. SMITH: And one final question, Your Honor?

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1 THE COURT: Yes.

2 MR. SMITH: Would Your Honor find it relevant to
3 examine the witness on the FBI -- we have an internal document
4 here indicating that the FBI understood in March 14, 2016, that
5 Mr. Young told the informant that his contacts overseas had
6 views opposing ISIS.

7 MR. GIBBS: Judge, again, the issue we're having, and
8 we had this discussion at the bench, sort of these internal
9 deliberations with the FBI are not relevant. It does open the
10 door to why the FBI was so concerned and, you know, put these
11 resources on this case, but, you know, again, asking this
12 witness about internal deliberations that he was likely not a
13 part of and that never resulted in communications with the
14 defendant is just not relevant. It has no -- you know, I think
15 Your Honor used the words "there's a lot of smoke here," and
16 you're trying to avoid the smoke. That's a huge amount of
17 smoke here.

18 THE COURT: I'm sustaining the objection. All right,
19 we're on recess until 11:30.

20 (Recess from 11:18 a.m., until 11:31 a.m.)

21 (Jury present.)

22 THE COURT: All right, Mr. Smith.

23 BY MR. SMITH:

24 Q. Agent Siegfried, you testified that on -- there was an
25 e-mail sent by Mr. Young on February 16, 2016, it was marked

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1 GX-1-219, and it referenced the Tor secure app. Do you
2 remember that e-mail?

3 A. Yes, I do.

4 Q. Did you testify that it was Mr. Young who first raised the
5 subject of communicating on a secure app with the informant?

6 A. Yes.

7 Q. You also testified about an e-mail that Mo, the alias Mo
8 sent to Mr. Young on June 14, 2016, correct, in which the alias
9 Mo attempts to solicit the defendant on texting on a more
10 secure app? This was Government Exhibit 1-221. It's an e-mail
11 sent from the alias Mo on June 14, 2016?

12 MR. GIBBS: Judge, I don't believe that was one of
13 his exhibits. He had left by April.

14 THE COURT: That's correct.

15 MR. SMITH: It's -- Your Honor, I'd like to hand up
16 an e-mail dated April 18, 2016, from the informant Mo to the
17 defendant.

18 Q. Have you ever seen --

19 MR. GIBBS: Judge, before he starts testifying again,
20 that is just a piece of paper. It's not marked again.

21 THE COURT: Well, these are not exhibits. They're
22 not going into evidence.

23 MR. SMITH: They're impeachment documents.

24 THE COURT: They're a piece of paper that's just
25 being used to not impeach but to refresh this man's memory.

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1 That's all right.

2 MR. GIBBS: Okay.

3 THE COURT: It's not going in the record.

4 MR. SMITH: Thank you, Your Honor.

5 Q. What is that e-mail that you're looking at?

6 A. It's an e-mail from Mo's e-mail account to the defendant.

7 Q. And have you ever seen that e-mail before?

8 A. Yes.

9 Q. Okay. And is it true that in that e-mail, the alias Mo
10 attempts to solicit a conversation with the defendant on a
11 secure app?

12 A. Yes.

13 Q. And do you know when the defendant responded to that
14 e-mail dated April 18, 2016?

15 A. I wasn't around when he responded.

16 Q. One of, one of your exhibits was Government Exhibit 1-221.
17 It was dated June 14, 2016, and it was from the defendant to
18 the alias Mo. Do you recall --

19 MR. GIBBS: Objection again, Judge. He left in April
20 2016. We didn't offer that exhibit through this witness.

21 THE COURT: I'm going to sustain the objection. Get
22 it from the correct witness. There will be another witness.

23 BY MR. SMITH:

24 Q. Isn't it true -- you are the -- you are a case agent on
25 this case. You are a case agent. You read this e-mail on

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1 April 18, 2016. You've reviewed it before, correct?

2 A. Yes.

3 Q. Isn't it the case that when the defendant responded to
4 that e-mail, he indicated, "I really don't trust electronic or
5 e-mail communications. Don't feel comfortable on this"?

6 MR. GIBBS: Objection, Judge. That's the June --

7 MR. SMITH: "I don't really do the" --

8 THE COURT: Wait, wait, wait. When there's an
9 objection, you have to stop so we can hear the objection.

10 MR. GIBBS: Objection. I believe that's the text
11 from the June e-mail that was just ruled that the defendant
12 (sic) didn't have a basis to testify to because he had left the
13 FBI by that time.

14 THE COURT: What are you reading from?

15 MR. SMITH: This is not a text. This is an e-mail
16 produced to the defense in discovery.

17 THE COURT: It doesn't make any difference. What's
18 the date of the e-mail?

19 MR. SMITH: The date of the e-mail is June 14, 2016.

20 THE COURT: Fine. It's after this witness is no
21 longer involved, so I'm sustaining the objection. You need to
22 move on to another line of questioning.

23 BY MR. SMITH:

24 Q. So, Agent Siegfried, at several points during the e-mail
25 exchange, during the e-mail exchange in which you were drafting

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1 e-mails with the alias Mo, the defendant, what was the
2 investigative purpose of having the alias write to Young about
3 Syrian butchery?

4 A. I'm not sure what you're referring to.

5 Q. Are you familiar with the fact that there are e-mails
6 between the defendant and the alias Mo between October 2014 and
7 June -- and April 2016 concerning the Syrian government's
8 butchery of its civilians? Are you familiar with those
9 e-mails? The alias Mo would write to Mr. Young in e-mails in
10 this period concerning the Syrian government's slaughter of its
11 people, correct?

12 A. I believe --

13 MR. GIBBS: Judge, again, we entered all the e-mails.
14 If he wants to show him one, I think that would be the best way
15 to approach this witness.

16 MR. SMITH: Your Honor, I'm entitled to ask --

17 THE COURT: I'm overruling the objection. This is
18 cross-examination, and this is one of the two agents who was
19 handling Mo and handling this aspect of the investigation. So
20 I'm overruling that objection.

21 MR. SMITH: Thank you, Your Honor. And I believe the
22 witness just said yes, but he was about to explain.

23 THE WITNESS: Yeah. I believe there may have been
24 reference to that at one point. I don't recall exactly which
25 e-mail.

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1 BY MR. SMITH:

2 Q. So do you understand as the handler agent for Mo what the
3 investigative purpose would have been to write about the Syrian
4 butcheries in Syria in the e-mail communications with
5 Mr. Young?

6 MR. GIBBS: Judge, again, this goes back to the FBI
7 deliberations.

8 THE COURT: Yes. You continue to go on that theme,
9 which I have said is outside of the proper way of defending
10 this case. I've made the ruling. You need to go on now,
11 Mr. Smith.

12 MR. SMITH: Your Honor, this is a slightly different
13 point. If I may, may we approach the bench?

14 THE COURT: You keep asking about strategy. Strategy
15 is not really relevant to this case.

16 MR. SMITH: This concerns the defendant's mindset,
17 Your Honor.

18 THE COURT: No. I'm sustaining the objection. Let's
19 move on.

20 BY MR. SMITH:

21 Q. In this time period between October 2014 and June 2016,
22 the alias Mo would write e-mails to the defendant about the
23 alias Mo's mother, correct?

24 A. I believe we reference it on at least one occasion.

25 Q. And was the reference to Mr. Young's -- Mr. -- the

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1 undercover informant Mo's mother, was that in connection
2 with -- was that designed to investigate Mr. Young's potential
3 material support for terrorism?

4 MR. GIBBS: Objection, Your Honor.

5 THE COURT: Sustained.

6 BY MR. SMITH:

7 Q. So we just talked about these e-mail -- this e-mail
8 exchange between the informant Mo, the alias of the informant
9 Mo on April 18, 2014 -- 2016, and June 14, 2016, correct?

10 THE COURT: I'm not sure the dates are correct. Try
11 that again.

12 MR. SMITH: I just examined the witness about an
13 e-mail dated April 18, 2016, that was marked Government Exhibit
14 1-116. It's 2016.

15 THE COURT: 116, do you have it there? It should be
16 in the book.

17 MR. SMITH: This is the solicitation e-mail we just
18 discussed.

19 Q. You reviewed this e-mail on April 18, 2016, in which the
20 undercover informant solicits a communication on the undercover
21 app with the defendant?

22 A. Yes.

23 Q. It's true that the defendant did not respond to this
24 communication for two months, correct?

25 MR. GIBBS: Judge, again, we've established this

1 witness left at the end of April. He didn't --

2 THE COURT: Sustained.

3 MR. GIBBS: Thank you.

4 MR. SMITH: That's it, Your Honor. Thank you.

5 THE COURT: All right. Is there any redirect?

6 MR. GIBBS: The only thing I need to do, Judge, is
7 clean up one thing. I believe we offered Government Exhibit
8 1-220, and when I read the list of exhibits we were offering in
9 order to speed things up, I don't think I mentioned that one.
10 That was the second February 16, 2016, e-mail. We would ask to
11 move that into evidence as well.

12 THE COURT: Any objection?

13 MR. SMITH: No objection.

14 THE COURT: All right, it's in.

15 (Government's Exhibit No. 1-220 was received in
16 evidence.)

17 THE COURT: All right, does anybody have any further
18 questions for this witness?

19 MR. GIBBS: I don't, Judge. Thank you.

20 THE COURT: He will not be recalled in the
21 government's case.

22 MR. GIBBS: No, because we took him all the way to
23 the end.

24 THE COURT: All right. Does the defense expect to
25 call this witness again, Mr. Smith?

1 MR. SMITH: Your Honor, whether we call this witness
2 will depend on how the government presents certain
3 communications later.

4 THE COURT: That's fine. That's the answer.

5 MR. SMITH: Okay.

6 THE COURT: So, Agent, you're not excused as a
7 witness. You don't have to be here the rest of today, I can
8 guarantee you that, but you're not to discuss your testimony or
9 anything you've seen or heard in court with any witness who has
10 not yet testified, all right?

11 THE WITNESS: Yes, ma'am.

12 THE COURT: All right, thank you.

13 (Witness stood down.)

14 THE COURT: Call your next witness.

15 MR. GIBBS: Judge, this is Special Agent Smith, and
16 this will require the screen.

17 THE COURT: All right. Folks, you're getting your
18 exercise this morning. It only takes a couple of minutes. I'm
19 actually going to stay in session, but you-all go out and just
20 stretch your legs, and we'll get you right back in here.

21 (Jury out.)

THE COURT: We need to get the screen up.

23 MR. SMITH: Your Honor, may I address just one point
24 that has been concerning to Your Honor over the course of these
25 cross-examinations, which is which particular government agent

1 should be questioned about certain documents, is it this agent
2 or the next, and the reason, Your Honor, the defense is
3 attempting to question certain agents about time periods that
4 might not exactly coincide with their time in the investigation
5 is the government has not informed us which agents it will be
6 using to present which evidence.

7 Now, there was a team, there was a whole team of
8 agents who were on this case, and we have no information about
9 which agent will present which evidence. So there's a risk if
10 we don't attempt to introduce certain evidence with Witness 1,
11 we'll lose that opportunity if Witness 2 does not present on
12 the subject matter we're trying to inquire into.

13 THE COURT: Well, I mean, part of that, I think,
14 could have been worked out ahead of time.

15 Would the government have objected -- I mean,
16 obviously, they don't have to tell you exactly what every
17 witness is going to testify to. This case has gone on for some
18 period of time, and there are obviously multiple agents who
19 have worked on it.

20 Has Minichello been on this case from the very
21 beginning?

22 MR. GIBBS: I don't think so. He left in 2015.

23 MR. KROMBERG: May I address that, Judge?

24 THE COURT: Yes, go ahead, Mr. Kromberg. Up at the
25 lectern.

1 MR. KROMBERG: Agent Minichello was not the agent
2 from the beginning. Agent Jones was the agent from the
3 beginning. Agent Jones is not being called to testify because
4 he left when -- quite a while ago. Agent Minichello replaced
5 Agent Jones, and Agent Caslen replaced Agent Minichello.

6 THE COURT: All right.

7 MR. KROMBERG: But to answer, to answer Mr. Smith's
8 question, if he focused on the exhibits that we're introducing,
9 he would have the right witness, but he's asking questions
10 about the exhibits that haven't yet been introduced.

11 THE COURT: All right.

12 MR. KROMBERG: It's also true that if he wants to
13 call anyone in the defense case, he can call them, too.

14 THE COURT: All right, to make things easier, to keep
15 this case moving, I will ask the government just to do a
16 timeline. That's all that's needed.

17 MR. SMITH: Thank you, Your Honor.

18 MR. KROMBERG: In fact, thank you. When I submitted
19 a timeline to the defense, they objected to it, but we want to
20 present a timeline to Special Agent Caslen's testimony as a
21 government exhibit to set forth just the concrete facts of what
22 happened when, and we're going to present that, as I hope will
23 be admitted, as a summary chart to go to the jury to help when
24 things happened.

25 THE COURT: Here's what we'll do: You take your

1 timeline and just put agents on it. In other words, Agent
2 So-and-so and Agent So-and-so were here to here on the
3 timeline. There may be overlap, Agent So-and-so and Agent
4 So-and-so were here.

5 That should give the defense what they need, all
6 right?

7 MR. KROMBERG: That will be fine.

8 THE COURT: Fine. Let's move on then. We're ready
9 to bring the jury back in.

10 MR. GIBBS: Your Honor, just one note. With Special
11 Agent Smith, he's testifying to the December interviews with
12 the defendant.

13 THE COURT: Hold on one second before we bring the
14 jury in.

15 MR. GIBBS: Both of the December 3 and December 5
16 interviews were recorded. We're going to play the entirety of
17 the last one because it's short. We're going to play clips, a
18 few clips of the first interview. I think the sound quality is
19 better than it was yesterday, but Your Honor had mentioned
20 headphones. If we have them available, certainly I think it
21 would be helpful.

22 THE COURT: Well, we don't have 14. I mean, you-all
23 need to make some commonsense approaches to the Court about
24 logistics. I would expect that an interview ought to have been
25 well recorded. So it better be because the tapes have been, I

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1 think, really very, very unfair to the jury to have to listen
2 to that kind of evidence from both sides, all right?

3 MR. GIBBS: Understood.

4 THE COURT: All right, let's get the jury in here.
5 Is the witness available? We can bring him in while they're
6 coming in.

7 (Jury present.)

8 THE COURT: All right, folks, you can all have a
9 seat.

10 All right, Mr. Gibbs?

11 SA SMITH, GOVERNMENT'S WITNESS, AFFIRMED

12 DIRECT EXAMINATION

13 BY MR. GIBBS:

14 Q. Good morning, sir.

15 A. Good morning.

16 Q. Sir, for purposes of this proceeding, you will be
17 testifying as Special Agent Smith, correct?

18 A. Yes, sir.

19 Q. And were you working as a task force officer for the FBI
20 beginning in 2010?

21 A. Yes, sir.

22 Q. And at some point during your time with the FBI, did you
23 participate in an investigation of the defendant, Nicholas
24 Young, as well as a number of other people?

25 A. Yes, I did.

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1 Q. All right. Is Nicholas Young here in court?

2 A. Yes, sir.

3 Q. Can you point him out and identify what he's wearing?

4 A. He's in the -- sitting between his defense counsel at the
5 defendant's table.

6 THE COURT: Any objection to the identification?

7 MS. MORENO: No objection.

8 THE COURT: All right. The witness has identified
9 the defendant.

10 MR. GIBBS: Thank you, Judge.

11 Q. Special Agent Smith, over the course of the investigation,
12 was a CHS known as Mo introduced to the defendant?

13 A. Yes, sir.

14 Q. And at some point in time, did Mo supposedly leave the
15 country?

16 A. Yes, sir.

17 Q. And prior to supposedly leaving the country, what did Mo
18 and the defendant do so that they would be able to communicate?

19 A. They established a -- e-mail accounts for both of them,
20 respectively.

21 Q. And once Mo supposedly left the country, who was actually
22 controlling Mo's e-mail account?

23 A. A combination of two colleagues on the same task force.

24 Q. So these were FBI agents?

25 A. One FBI agent and one task force officer.

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1 Q. Okay. And by December of 2015, how long had the defendant
2 been corresponding with Mo's e-mail account?

3 A. Over a year.

4 Q. And by December of 2015, was the decision made to
5 interview the defendant?

6 A. Yes, sir.

7 Q. And where did that interview take place?

8 A. The first interview occurred at the Panera in Fairfax.

9 Q. And that's in Northern Virginia?

10 A. Yes, sir.

11 Q. And you said that's in Fairfax County?

12 A. Yes, sir.

13 MR. GIBBS: Your Honor, we would just ask for
14 judicial notice that that occurred in the Eastern District of
15 Virginia.

16 THE COURT: I'll take such notice.

17 MR. GIBBS: Thank you.

18 Q. And you said the date of that interview was December 3,
19 2015?

20 A. That's correct.

21 Q. All right. And how did you contact the defendant to be
22 able to interview him at that Panera bread in Fairfax?

23 A. We called him.

24 Q. All right. And who specifically called him?

25 A. I did.

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1 Q. And what did you say to him?

2 A. We called -- I don't remember the exact words I used, but
3 I -- we asked if he could help with a matter and meet with us.

4 Q. Did you give him any more details than that?

5 A. No.

6 Q. And describe what happened. Who got to the Panera first?

7 A. Myself and Special Agent Caslen.

8 Q. All right. And was he the other person in the interview?

9 A. Yes, sir.

10 Q. And how long did it take the defendant to arrive?

11 A. I can't remember, maybe 30 minutes or so. We were there
12 maybe 20-30 minutes earlier.

13 Q. And once the defendant arrived, is that when the first
14 interview took place?

15 A. Yes, sir.

16 Q. And was that interview recorded?

17 A. Yes, sir.

18 Q. And did the defendant know that?

19 A. I -- no, he did not. We did not advise the defendant that
20 we were recording the interview.

21 Q. And when that interview first began, what were you asking
22 the defendant about initially?

23 A. We interviewed him initially, asked him about an associate
24 of his that -- named Peshwaz Waise, another Northern Virginia
25 resident.

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1 MR. GIBBS: And if we can just pull up 9-106 briefly?

2 Q. Do you recognize that individual?

3 A. I do.

4 Q. And who is that?

5 A. That is Peshwaz Waise.

6 Q. So that's the person you were asking the defendant about?

7 A. Correct.

8 Q. All right. And next if you could take a look, Special
9 Agent, at Government Exhibit 5-101-1? I believe there -- on
10 the lectern, there should be discs up there, right? Yep.

11 A. Okay.

12 Q. Do you recognize that?

13 A. I do.

14 Q. And that's a disc, right?

15 A. Actually, it's a transcript.

16 Q. Okay. Is there a disc with it?

17 A. No, sir.

18 MR. GIBBS: If I could indulge the court security
19 officer, we're going to be -- well, let's start with 5-101-1.
20 We'll ultimately enter all the ones in that series.

21 THE COURT SECURITY OFFICER: 5-101-1?

22 MR. GIBBS: Yes, sir, 5-101-1.

23 THE COURT: It's again just a piece of paper.

24 Where's your CD?

25 MR. GIBBS: I believe it's in the bin, correct?

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1 THE COURT SECURITY OFFICER: There's no disc in here.

2 THE COURT: Are there any discs over there at all?

3 THE COURT SECURITY OFFICER: There are some that were
4 previously reviewed, Your Honor.

5 MR. GIBBS: Judge, we actually have it. I can hand
6 it up. I apologize for that.

7 THE COURT: All right. We have one over here.

8 Mr. van Roekel?

9 Does that have the label on it?

10 MR. GIBBS: It does, Your Honor.

11 THE COURT: All right. 5-101-1, is that correct?

12 MR. GIBBS: It is. And actually, we put all the
13 clips on there, so I believe it's 101-1 through 101-7.

14 Q. Is that correct?

15 A. Yes, sir.

16 Q. Okay. And you reviewed that prior to your testimony here
17 today?

18 A. I did.

19 MR. GIBBS: Judge, we would move in the disc and ask
20 to play the first clip along with the transcript that
21 accompanies it.

22 THE COURT: Any objection?

23 MS. MORENO: No objection, Your Honor, as long as
24 it's described as clips, individual clips from the interviews.

25 MR. GIBBS: Correct.

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1 THE COURT: Clips would be an excerpt. It's not the
2 entire interview, all right. But we'll have to talk about how
3 it all goes back to the jury, all right? You're only playing
4 one clip, one portion of that.

5 MR. GIBBS: Right. And I can maybe clarify that a
6 bit.

7 Q. So, Special Agent Smith, when you conducted the interview
8 with the defendant, with Special Agent Caslen present, how
9 long -- again, just roughly ballpark, how long were you at the
10 Panera there with the defendant?

11 A. I would say approximately two hours, two-and-a-half hours
12 approximately.

13 Q. Okay. And obviously, the clips we're going to play do not
14 amount to anywhere near that time, correct?

15 A. No, sir.

16 Q. Okay. So these are, these are excerpted from the longer
17 interview itself, right?

18 A. Yes, sir.

19 MR. GIBBS: All right, thank you.

20 And if we can start with 101-1 and 101-1T?

21 THE COURT: T being the transcript?

22 MR. GIBBS: Correct.

23 (Government's Exhibit No. 5-101-1 was played.)

24 BY MR. GIBBS:

25 Q. Now, Special Agent, in that recording, the defendant said

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1 when he was asked about Mo that Mo had left a year ago on
2 vacation and that he went to Turkey. Now, by this point in the
3 investigation, what had the FBI agent who was posing as Mo led
4 the defendant to believe that Mo was doing?

5 A. He was a fighter for the Islamic State.

6 Q. And when Mo was still in this area here in Northern
7 Virginia, who helped him come up with the story that he was
8 going to Turkey for a vacation?

9 A. The defendant, Mr. Young.

10 MR. GIBBS: Next if we could turn to Government
11 Exhibit 5-101-2, which again is a clip of the December 3, 2015,
12 interview? We'd ask to publish that along with the transcript.

13 THE COURT: All right.

14 (Government's Exhibit No. 5-101-2 was played.)

15 MR. GIBBS: All right, next I'd like to turn to clip
16 3, which is 5-101-3T, and ask to publish that by playing it
17 along with the transcript.

18 THE COURT: All right.

19 (Government's Exhibit No. 5-101-3 was played.)

20 BY MR. GIBBS:

21 Q. Now, Special Agent, in that clip, the defendant said at
22 one point that ISIS declared the Caliphate in the summer of
23 2014. Do you recall that?

24 A. I do.

25 Q. And was that your understanding as well?

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1 A. Yes, it is.

2 Q. And at one point, the defendant brought up Peshwaz, and he
3 sort of compared him to Mo and said that Peshwaz was always
4 talking about religion and Mo wasn't. Who was Peshwaz again?

5 MS. MORENO: First of all, objection. Leading.

6 Misstates the evidence.

7 THE COURT: It is leading, so I'm sustaining the
8 objection.

9 BY MR. GIBBS:

10 Q. Who is Peshwaz?

11 A. Peshwaz is a Northern Virginia resident, also a subject of
12 the FBI.

13 Q. And that was the person whose photograph you identified
14 earlier?

15 A. Yes, sir.

16 MR. GIBBS: Thank you.

17 And, Your Honor, we would next move into evidence and
18 play Exhibit 5-101-4. That's another clip from the December 3
19 interview.

20 THE COURT: All right, it's in.

21 (Government's Exhibit No. 5-101-4 was received in
22 evidence and was played.)

23 BY MR. GIBBS:

24 Q. Special Agent Smith, in that quote when the defendant was
25 asked about where Mo was, he said, "Maybe he was going to

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1 Turkey."

2 Where had Mo actually led the defendant to believe
3 that he was going?

4 A. To the Islamic State's capital of Raqqah, in Syria.

5 Q. And what was the story that the defendant and Mo came up
6 with to explain what he would be doing overseas?

7 A. That he would be taking a tour in Turkey.

8 Q. And towards the end of that clip, Special Agent Caslen in
9 talking to the defendant said, "You're a cop." Where did the
10 defendant work at that time?

11 A. He was a Metro Transit Police officer.

12 MR. GIBBS: Your Honor, if we could play Exhibit
13 5-101-5? That's another clip from the December 3 interview.

14 THE COURT: All right.

15 (Government's Exhibit No. 5-101-5 was played.)

16 MR. GIBBS: Your Honor, that was a short clip. We'll
17 just go straight to the next one, which is 5-101-6T.

18 THE COURT: All right.

19 (Government's Exhibit No. 5-101-6 was played.)

20 MR. GIBBS: And then let's go to the last clip of the
21 December 3, 2015, interview, which is clip 7. It's 5-101-7T.
22 If we could play that along with the recording?

23 THE COURT: All right.

24 (Government's Exhibit No. 5-101-7 was played.)

25 BY MR. GIBBS:

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1 Q. All right. Special Agent Smith, at the beginning of that
2 last clip, the defendant said he hadn't had any contact with Mo
3 since October 2014. Do you recall that?

4 A. Yes, sir.

5 Q. All right. As of December of 2015, what sort of
6 communicating was the defendant doing with the person he
7 believed was Mo?

8 A. They were exchanging e-mail correspondence.

9 Q. And, in fact, later in that clip, he said that he used to
10 have an e-mail address for Mo, and he thought it was something
11 like mmohammad. In fact, what was the e-mail address that the
12 defendant was using to communicate with the person he believed
13 was Mo?

14 A. The e-mail address that the defendant was using was
15 essakobayashi@mail.com.

16 Q. And the essakobayashi, that was the defendant's e-mail
17 address?

18 A. Yes, sir.

19 Q. And what was Mo's e-mail address?

20 A. Mo utilized v4Vendetta@mail.com.

21 Q. Thank you.

22 Now, Special Agent Smith, was a second interview with
23 the defendant conducted?

24 A. Yes, sir.

25 Q. How long after that first interview was the second one?

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1 A. Approximately two days.

2 Q. And who conducted the second interview?

3 A. Myself and Special Agent Caslen.

4 Q. And where did that take place?

5 A. That occurred outside his residence, also in Fairfax
6 County.

7 MR. GIBBS: Again, Judge, we would ask that the Court
8 take judicial notice of the fact that it occurred in the
9 Eastern District of Virginia.

10 THE COURT: Yes, we'll take such notice.

11 MR. GIBBS: Thank you, Judge.

12 Q. Was the defendant expecting you and Special Agent Caslen
13 when you arrived?

14 A. No, sir.

15 Q. And you said the interview took place outside of his
16 house?

17 A. Well, the defendant stood inside his house, and myself and
18 Special Agent Caslen stood outside on his front step.

19 Q. And was the second interview also recorded?

20 A. Yes, it was.

21 MR. GIBBS: And if we could, Your Honor, I would ask
22 to play that interview, and if I could hand up the disc?

23 THE COURT: What exhibit number?

24 MR. GIBBS: It's 5-102.

25 THE COURT: Is there any objection to that?

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1 MS. MORENO: No objection.

2 THE COURT: No? It's in.

3 (Government's Exhibit No. 5-102 was received in
4 evidence.)

5 BY MR. GIBBS:

6 Q. First of all, do you recognize that?

7 A. I do.

8 Q. Do you see your initials on there or your name?

9 A. I wrote "Smith" on there and the date.

10 Q. You reviewed this prior to your testimony today?

11 A. I did.

12 MR. GIBBS: All right, we would ask to play 5-102 and
13 project the transcript along with it.

14 THE COURT: All right, go ahead.

15 (Government's Exhibit No. 5-102 was played.)

16 BY MR. GIBBS:

17 Q. Now, Special Agent Smith, toward the beginning of that
18 clip, the defendant had said Mo had, quote, talked about going
19 with, like, a tour group or something. Prior to leaving, what
20 had Mo actually led the defendant to believe was the purpose of
21 his trip?

22 A. To join the Islamic State.

23 Q. And later in that clip, the defendant was asked about Mo's
24 e-mail, and he said it was probably in a car he had recently
25 sold. During this time, what was the defendant using to

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1 communicate with the person he believed was Mo?

2 A. E-mail addresses that they set up together.

3 Q. And what was the particular e-mail address he had for Mo?

4 A. V4Vendetta@mail.com.

5 Q. And later in that clip, the defendant denied knowing
6 anyone who gave Mo guidance or advice on his travel. Before Mo
7 left for his trip, who was the person who gave him a great deal
8 of guidance or advice for his travel?

9 A. Nicholas Young.

10 MR. GIBBS: Thank you, sir. I believe the defense
11 will have some questions for you.

12 THE COURT: Okay. Cross?

13 CROSS-EXAMINATION

14 BY MS. MORENO:

15 Q. Agent Smith, now, when you went to see Nick Young on
16 December 3, you were with Special Agent Caslen, correct?

17 A. Yes, ma'am.

18 Q. And that particular interview was about two hours, right?

19 A. Yes, ma'am.

20 Q. Two-and-a-half hours?

21 A. Approximately, yes.

22 Q. And not only did you have a recording, but you generated
23 what's called a 302 report on the basis of that first
24 interview, correct?

25 A. Yes, ma'am.

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1 Q. And you've reviewed that particular report before
2 testifying here today, right?

3 A. Yes, ma'am.

4 Q. And the same is true of the second interview on
5 December 5, two days later. We heard the clip on that just
6 now, right?

7 A. Yes, ma'am.

8 Q. And you also generated another 302 on that, correct?

9 A. Yes, ma'am.

10 Q. And that's just a report summarizing the interviews,
11 right?

12 A. Yes, ma'am.

13 Q. And you've also reviewed that one as well?

14 A. Yes, ma'am.

15 Q. Okay. Because I'm going to ask you some questions about
16 that.

17 But first of all, when you called Nick Young, you had
18 asked him to meet you gentlemen at the Panera; is that right?

19 A. That's my recollection. I know that's where we ended up
20 in doing the interview. I believe we, we suggested that
21 location. I don't recall precisely where we said to meet. It
22 just, that's where we ended up meeting.

23 Q. Now, if -- Nick Young knew that he was meeting with you in
24 your capacity as an FBI agent, correct?

25 A. Yes, ma'am, but I'm not an FBI. I'm a task force officer.

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1 Q. Sorry. But he did -- he was advised that Special Agent
2 Caslen over here was going to meet with him, correct?

3 A. I don't remember if I said over the phone who he'd be
4 meeting with, but I, I thought I mentioned that I was going to
5 be in the interview as well.

6 Q. Here's my question: He knew he was meeting with federal
7 law enforcement officers, correct?

8 A. Yes, ma'am. Yes, ma'am.

9 Q. All right. And when he went to see you, did he bring a
10 lawyer?

11 A. No, ma'am.

12 Q. Okay. And this interview that lasted two-and-a-half
13 hours, at any time, he could have gotten up and left, correct?

14 A. Yes, ma'am.

15 Q. And at any time, he could have asked for a lawyer, right?

16 A. Yes, ma'am.

17 Q. But he continued to talk to you, correct?

18 A. Yes, he did.

19 Q. That entire interview. And, in fact, two days later, he
20 spoke to you?

21 A. Yes, he did.

22 Q. And at no time did he want counsel with him?

23 A. He never said anything like that.

24 Q. Right. Now, he -- so in that first interview, which is
25 the long interview, December 3, I want to focus your attention

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1 on that, you talked about a variety of -- you talked about a
2 few people. You talked about Peshwaz.

3 A. Yes, ma'am.

4 Q. Okay. And you know that Mr. Young hadn't seen this
5 gentleman, Peshwaz, for a couple of years, right?

6 A. That's what he told us.

7 Q. Okay. And you then asked him a number of different
8 questions about Mo, correct?

9 A. Yes, ma'am.

10 Q. And he had told you -- you had asked him where, if he
11 had -- if this gentleman, Mo, had family overseas, right?

12 A. Yes, ma'am.

13 Q. And he told you that he thought that he had some family in
14 Palestine, correct?

15 A. Yes, ma'am.

16 Q. By the way, there was a -- in one of the clips, there was
17 something about Mr. Young didn't speak the language or Arabic,
18 and I think it was cut off. You have no evidence that
19 Mr. Young speaks Arabic, do you?

20 A. I have none.

21 Q. Okay. I mean, you've never heard him on any tapes or
22 anything or in conversations speaking Arabic, right?

23 A. No, ma'am.

24 Q. You don't know that to be the case, correct?

25 A. I do not believe -- I do not know him to speak Arabic.

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1 Q. Okay. Now, it was kind of -- and forgive me for
2 characterizing it, but with you and Mr. Caslen, the both of you
3 were asking Nick Young questions, right?

4 A. Yes, ma'am.

5 Q. And it was kind of like a tag team between the two of you,
6 correct?

7 A. Yes, ma'am.

8 Q. Right. Because you, you were -- and a lot of the
9 conversations, you were also trying to, shall we say, build
10 some sort of rapport with Mr. Young, correct?

11 A. Yes, ma'am.

12 Q. Okay. Because sometimes either you or Special Agent
13 Caslen were talking about how -- talking about how perhaps ISIS
14 had been overexaggerated in the news, right?

15 A. Yes.

16 Q. You remember some of those comments.

17 But, of course, that's not how you really felt,
18 right?

19 A. No, ma'am, I do not -- did not.

20 Q. Now, you asked specifically about Mo and Mo's opinions
21 about the Islamic State a number of times in a number of ways,
22 fair?

23 A. Yes, ma'am.

24 Q. Okay. And what you said was -- what Mr. Young would say
25 at various times, he would say yes, that Mo had a generally

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1 favorable opinion of Islamic State. He told you that, right?

2 A. Yes, ma'am.

3 Q. Okay. And, in fact, Mr. Young had admitted to you that Mo
4 could have gone to fight with the Islamic State, right?

5 A. Yes, something to that effect.

6 Q. Right. You remember him saying that, correct?

7 A. He said -- I believe it was, it could have been inferred,
8 it's a possibility that he could have gone, I think, was as far
9 as an affirmative statement that he had joined the Islamic
10 State that he stated on that interview. He did not say, to my
11 recollection, that he went to join the Islamic State or that he
12 had joined the Islamic State.

13 Q. Mr. Young told you that Mo, or Mohammad -- when "Mohammad"
14 is used in your reports, that would be Mo, the Mo we're talking
15 about, correct?

16 A. Yes, ma'am.

17 Q. All right. And he told you that Mohammad could be either
18 in the Islamic State or Palestine or with his sister somewhere
19 in the U.S. He told you that, right?

20 A. Yes, ma'am. I don't have that exact part of the
21 transcript in front of me, but that sounds correct.

22 Q. Okay. Would you like to see your report?

23 A. Sure, yes.

24 THE COURT: He said it sounds correct. He's not
25 disputing that.

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1 MS. MORENO: Okay. Thank you, Your Honor.

2 Q. And he told you -- in fact, he told you the correct date
3 that the last time that he had spoken to Mo -- excuse me, the
4 last -- the time that he thought Mo had left the country was
5 October 2014, right?

6 A. Yes. Mr. Young did say that he believed that Mo had
7 departed the United States before Halloween in 2015.

8 Q. '14?

9 A. '14, sorry.

10 Q. Okay. And, in fact, in one of the clips that we heard,
11 one of you gentlemen was talking about, well, he could have
12 gone between July and the fall or something, and Mr. Young
13 corrected you and said, "I think he left in October of 2014,"
14 right?

15 A. Yes, ma'am, he did.

16 Q. Okay. And, in fact, Mo never -- Mo was always in the
17 country, right, except for that short trip with, with another
18 agent to Turkey?

19 A. Yes, ma'am.

20 Q. There was discussions about Syria between Mr. Young and
21 yourself, right?

22 A. Yes, ma'am.

23 Q. And when I say "yourself," I'm also including Agent
24 Caslen, correct?

25 A. Correct.

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1 Q. And, and there was discussions about the confusing
2 situation in Syria, right? We heard that in one of the, the
3 clips just now?

4 A. Yes.

5 Q. And, and the different, the different factions that were
6 over in Syria made it a confusing situation, correct? Correct?

7 A. Yes, correct.

8 Q. In one of the conversations, I think Government's Exhibit
9 5-101-4, there was some discussions about Mo, and Mr. Young
10 said, "Yes, it could be inferred that he was going to ISIS."

11 A. Yes.

12 Q. He told you that, right?

13 But that he couldn't, he couldn't get really good
14 information because it was a difficult situation over there,
15 correct?

16 A. Yes, ma'am.

17 Q. In one of the clips played, 5-101-5, the question was
18 asked of Mr. Young if anyone in the community would have told
19 Mo to go over there. Do you remember that discussion?

20 A. I don't recall the question being that -- it was more of
21 would you have gone for guidance? More open-ended than
22 suggesting that someone would tell him to go.

23 Q. And Mr. Young replied that no one in the community would
24 actually tell him to go and fight, right?

25 A. I wouldn't characterize that as -- respectfully, ma'am, it

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1 was just more open-ended. I mean, I don't dispute what's in
2 the transcript, but I don't recall him saying exactly that.

3 Q. You don't dispute what's in the transcript.

4 A. Right. I mean, I don't want to misspeak. My recollection
5 is he said he didn't know of anyone he would go to the
6 community for guidance and left it at that.

7 Q. But again, there were a number of times when Mr. Young
8 said that it was a confusing situation over there --

9 A. Yes, ma'am.

10 Q. -- to you, right?

11 In fact, at one point when there were a number of
12 questions being asked and Mr. Young was hesitant about
13 answering specifically, Mr. Caslen said that Mr. Young wasn't
14 putting words in other people's mouths. Do you remember that
15 comment on the clip that was played?

16 A. I do.

17 Q. Now, this entire time that you're asking questions about
18 Mo, you already knew the answers to these questions that you
19 were asking Mr. Young, right?

20 A. Yes, ma'am.

21 Q. And there wasn't any real FBI investigation into Mo,
22 correct?

23 A. No, ma'am.

24 Q. There was no grand jury investigation into Mo, right?

25 A. No, ma'am.

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1 Q. During this -- during these two interviews, you did not
2 say to Mr. Young that he himself was under investigation, did
3 you?

4 A. No, ma'am.

5 Q. At one point, focusing back on December 3, the first
6 interview, the long interview, there was a discussion, you were
7 asking him about Peshwaz, and I think either yourself or
8 Special Agent Caslen brought up the attacks on civilians in
9 California. Do you remember that?

10 A. Yes.

11 Q. And, in fact, Mr. Young told you that one would not find
12 anything in the Koran that would encourage attacks on
13 civilians. He told you that; do you remember that?

14 A. Yes, ma'am.

15 Q. And that's in your report, correct?

16 A. Yes.

17 MS. MORENO: May have a moment, Your Honor?

18 I have nothing further, Your Honor.

19 THE COURT: All right. Any redirect?

20 MR. GIBBS: Nothing for this witness, Judge. Thank
21 you.

22 THE COURT: Superb timing since it's just about
23 lunchtime. We can take the screen down and not have to waste
24 everybody's time doing that, all right.

25 No one's going to call Agent Smith again; is that

1 correct?

2 MR. GIBBS: We are not, Judge.

3 MS. MORENO: We are not.

4 THE COURT: All right. Then, sir, you're excused as
5 a witness. You may leave at this time. Do not discuss your
6 testimony with any witness who has not yet testified, all
7 right?

8 THE WITNESS: Thank you, Your Honor.

9 (Witness excused.)

10 THE COURT: All right. Then, ladies and gentlemen,
11 I'm going to give you one hour, so please be back here at 5 of
12 two, and we'll start the next witness at that time.

13 (Recess from 12:58 p.m., until 1:55 p.m.)

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1 | A F T E R N O O N S E E M S H O P P I N G

2 (Defendant present, Jury out.)

3 THE COURT: All right, the jury is ready. I just
4 want to find out, Mr. Gibbs or Mr. Kromberg, what's your time
5 estimate now? We have, I think, eight witnesses left on your
6 list.

7 MR. GIBBS: I know this afternoon I've got two FBI
8 witnesses, and I don't think they're going to take a
9 tremendously long amount of time. The first one is longer than
10 the other. We will certainly finish with those two this
11 afternoon.

12 Then we've got Paul Lee, right?

13 MR. KROMBERG: May I?

14 THE COURT: Yes.

15 MR. KROMBERG: So we have two FBI witnesses, a CART
16 examiner who should be short. Then we have three or four
17 relatively short civilian witnesses that are here. We want to
18 put them on.

19 Our expert witness we didn't tell to come until
20 tomorrow morning, but we could if necessary, if we get that
21 far, we can just go to our summary witness, Special Agent
22 Caslen. So we could in theory finish tomorrow morning -- well,
23 again, it's tough to say, but --

24 THE COURT: Right.

25 MR. KROMBERG: -- we should expect to be done, our

1 case, tomorrow.

2 THE COURT: That's my estimate. I would suspect
3 probably midday tomorrow or so.

4 So that's just notice to the defense, if you're going
5 to have any witnesses, you need to have them on deck for
6 tomorrow.

7 MS. MORENO: Yes, Your Honor.

8 THE COURT: All right. Now, what I do plan to do
9 is -- we'll get the jury in here in a second -- if we complete
10 all of the evidence by close of business tomorrow, which is
11 Thursday, even if it's not six o'clock, I'm going to send the
12 jury home a little early if we get done, like, at four or five,
13 because I think it's better if we can to have closing arguments
14 and instructions back to back and then let the jury start
15 deliberation.

16 I only have one criminal matter on the docket for
17 Friday morning. That's at 9:00, so we can start Friday at
18 9:30, so that may be how we handle things. We'll see how it
19 goes.

20 All right, let's bring the jury in.

21 And this is going to be Agent Sikorski? That's the
22 next witness?

23 MR. GIBBS: That's correct, Judge.

24 THE COURT: All right. Do you have somebody to get
25 him in here?

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1 MR. GIBBS: He's here.

2 THE COURT: Oh, all right. Agent, come up here and
3 stand by the witness box.

4 (Jury present.)

5 THE COURT: All right, ladies and gentlemen, I thank
6 you for being right here on time. We're taking the next
7 witness.

8 SA JOHN SIKORSKI, GOVERNMENT'S WITNESS, AFFIRMED

9 DIRECT EXAMINATION

10 BY MR. GIBBS:

11 Q. Good afternoon, sir.

12 A. Good afternoon.

13 Q. Sir, would you please state your name for the record and
14 spell your last name.

15 A. Sure. My name is Jonathan Sikorski. My last name is
16 spelled S-i-k-o-r-s-k-i.

17 Q. And who are you employed by?

18 A. I'm employed by the Department of Justice, FBI.

19 Q. How long have you been with the FBI?

20 A. I've been with the FBI since February of 2010, so a little
21 over seven-and-a-half years.

22 Q. Now, sir, in the summer of 2016, were you assigned to
23 assist in the Nicholas Young investigation?

24 A. Yes, I was.

25 Q. And as part of that assignment, were you assigned to

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1 impersonate a confidential human source named Mo in order to
2 communicate with the defendant?

3 A. Yes, I was.

4 Q. Now, prior to your communications with the defendant, had
5 he been communicating with anyone else at the FBI?

6 A. Yes. He had been communicating with other individuals
7 employed by the FBI online in a similar manner that I was going
8 to be.

9 Q. And if you could -- we could -- let's see. I'd like to
10 have you take a look at, let's just pull up Government Exhibit
11 1-221, which is already in evidence. Do you -- yeah.

12 Special Agent Sikorski, what is this?

13 A. This is an e-mail that I received on June 14, 2016, from
14 the Essa Kobayashi account to the V4Vendetta account.

15 Q. And who is the Essa Kobayashi account from?

16 A. That is the defendant.

17 Q. And who was, who was handling the V4Vendetta account at
18 that point?

19 A. At this point, it was the government operating --
20 impersonating the confidential human source known as Mo, but we
21 were -- the government was operating that account at that time.

22 MR. GIBBS: All right, thank you.

23 And, Fabian, if we could highlight the portion that
24 begins, "I don't really do the tech thing," and ends with "but
25 inshallah that app will be okay"?

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1 Q. Special Agent Sikorski, when did the defendant say that he
2 would message you on the app?

3 A. He said he would message me on the app within the week.

4 MR. GIBBS: And then if we could bring up Government
5 Exhibit 1-222? If we could blow that up?

6 THE COURT: 221 is not in yet.

7 MR. GIBBS: Oh, it's not?

8 MR. SMITH: It is in.

9 THE COURT: Well, it's not showing on our list.

10 MR. GIBBS: Okay. And I trust your list. This
11 morning, I intended to enter all the e-mails. I would ask to
12 enter the last two Essa Kobayashi e-mails, which are 1-221 and
13 1-222.

14 THE COURT: Is there any objection to those?

15 MR. SMITH: No objection.

16 THE COURT: All right, they're in.

17 (Government's Exhibit Nos. 1-221 and 1-222 were
18 received in evidence.)

19 BY MR. GIBBS:

20 Q. And then as to that exhibit, 1-222, what is that, sir?

21 A. This is an e-mail again from the Essa Kobayashi account to
22 the V4Vendetta account that was sent on Thursday, July 14,
23 2016.

24 Q. And what did he say in that message?

25 A. "Salam alikom brother, I messaged you on the app..."

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1 Q. Now, you testified a moment ago that in his June 14
2 e-mail, the defendant said he would message you on the app
3 within a week. How long did it actually take him?

4 A. It was a full month.

5 Q. And how many times did the FBI contact the defendant
6 between June 14 and July 14 to try to convince him to send a
7 message using the app?

8 A. None.

9 Q. Now, what was this app?

10 A. The app we were referring to is an app called Threema,
11 T-h-r-e-e-m-a.

12 Q. And can you explain what Threema is?

13 A. Threema is a social media messaging app. It's an
14 encrypted messaging app that is run on individuals' phones or
15 mobile devices or even could be run on a laptop. That app
16 offers encrypted messaging from one end to the other.

17 Q. And what is the -- what does the fact that it's encrypted,
18 what does that mean?

19 A. It means that only the two users, so the two end users,
20 are able to view that message. Therefore, the actual
21 communication that's going across the airways, whether it be a
22 cell phone signal or a WiFi network, is encrypted, and the two
23 end users are the people who can actually see what the message
24 says.

25 Q. And beginning in mid-July of 2016, did you, in fact, begin

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1 to communicate with the defendant using this Threema app?

2 A. Yes, I did.

3 MR. GIBBS: And, Your Honor, at this time, again for
4 the sake of a little bit of speed and efficiency, I'm going to
5 have the agent testify to a number of the Threema
6 communications, and if I could just offer into evidence, if
7 there's no objection, Exhibits 2-101 through 2-112, 2-116,
8 2-118 through 2-123, and 2-125 through 2-130?

9 THE COURT: Any objection?

10 MR. SMITH: No. Your Honor, we have no objection,
11 but we don't know why we're not just admitting all of the
12 Threema messages.

13 THE COURT: Because there's no sense in putting more
14 into the jury -- for the jury's consideration if we don't need
15 them all. I don't want a lot of cumulative evidence, so it's
16 an appropriate use of an economical approach to things. If
17 there are additional exhibits you want to use in your cross, of
18 course, you may.

19 MR. SMITH: Okay. Thank you.

20 THE COURT: They're all in.

21 (Government's Exhibit Nos. 2-101 thru 2-112, 2-116,
22 2-118 thru 2-123, and 2-125 thru 2-130 were received in
23 evidence.)

24 MR. GIBBS: Thank you, Judge.

25 Q. So if we could, let's pull up 2-102. Do you see that on

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1 the screen?

2 A. Yes, I do.

3 Q. And what is that?

4 A. This is a picture of a Threema account. The Threema
5 account is, has the user ID HWM5PPKH, and that is the user
6 account that sent me a message on the Threema account --
7 Threema account, sorry.

8 Q. And whose Threema account is this?

9 A. That's the defendant's, sir.

10 Q. And next if we could pull up Exhibit 2-101? What is
11 2-101?

12 A. 2-101 is again a picture of the phone I was utilizing to
13 use the Threema app. In this case, it's a picture of the
14 message that the defendant sent me on Thursday, July 14, 2016.

15 Q. And you talked about receiving it. Did you actually
16 receive this message on a cell phone?

17 A. Yes. It's -- the actual photo that is behind that
18 zoomed-in picture, yes, that photo right there, that is a photo
19 of the actual cell phone I was using to send and receive the
20 messages.

21 Q. And we're going to look at a number of Threema messages
22 here this afternoon. Is that the way you captured all of the
23 defendant's Threema messages, by taking a photograph of it?

24 A. Yes. I used another phone and took a photograph of the
25 actual phone I was using.

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1 Q. And was there a reason that you did that?

2 A. Yes.

3 Q. And what was the reason?

4 A. Many of the online encrypted messaging apps have a
5 security feature installed within them. If I was to conduct a
6 screen capture of that actual message, it would send the other
7 user a notification that that screen capture was just taken,
8 and we did not, obviously, want that to happen.

9 Q. And in the message that we have here before us, 2-101, the
10 defendant says: "Salam alicom V." Did you understand the
11 reference to V?

12 A. Yes. V is a reference to the e-mail account, the
13 V4Vendetta account that had previously been utilized by the FBI
14 and the confidential human source, Mo.

15 Q. And the letters and numbers at the top, the HWM5PPKH,
16 again, what, what is that?

17 A. That is the Threema user account that was being utilized
18 by the defendant's Threema account. I believe it is assigned
19 by Threema. I do not believe it is picked, but I can't
20 definitively say if that was a specific picked series of
21 letters and numbers.

22 Q. All right. And next if we could go to Exhibit 2-103?

23 A. Yes.

24 Q. Now, how long after the defendant's July 14 message did
25 you respond?

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1 A. We waited about four days, and I responded on Monday,
2 July 18, 2016, and my response is indicated in the green bubble
3 that you can see in the lower half of that picture of the cell
4 phone.

5 Q. All right, thank you. You read my mind.

6 And in your message to the defendant, when you
7 said, "I was out on ribat over the past week," what does
8 "ribat" mean?

9 A. "Ribat" is a term used by Islamic fighters as an operation
10 or fighting. It's a term just used to abbreviate that.

11 Q. All right, thank you.

12 Next if we can go to Exhibit 2-104?

13 A. Yes. This is again a picture of the phone I was utilized
14 to communicate on Threema, and there is a new message here, the
15 bottom bubble, that begins with, "I don't pay attention." You
16 can see that I sent that message at 4:38 p.m., indicated by the
17 time stamp on the lower left.

18 Q. And in that bubble at the bottom that we have just zoomed
19 in on, it said, "Lots more drones than there were b4 and a lot
20 of good brothers have earn shahadah." What did you intend to
21 convey by using the term "shahadah"?

22 A. "Shahadah" is an Islamic term used for individuals dying
23 on behalf of Allah sometimes on the battlefield, sometimes in
24 other ways, but it's a term utilized in that manner.

25 Q. And then right after that, you talked about we lose a lot

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1 and try to replace quick need to do it faster.

2 Was that the end of that message?

3 A. Yes, it was.

4 Q. Thank you.

5 Next if we could pull up Exhibit 2-105?

6 A. Again, this is a continuation. This is another picture of
7 the cell phone that I was utilizing, utilizing to communicate
8 on Threema. The newest message is the message that I sent on
9 the bottom, indicated in the lower green bubble, that I sent at
10 4:41 p.m.

11 Q. And in that lower message, you told the defendant, "I know
12 u mention u would loookfor that email account that u dont have
13 to sign up for and let us know about it." What was that in
14 reference to?

15 A. That was a reference to a previous conversation that the
16 individual, the other FBI employee had with the defendant on
17 the e-mail accounts. That was referenced previously to my
18 involvement referencing making an e-mail account that was
19 secure to communicate back and forth.

20 Q. And then below that, you said, "We dont use emails to talk
21 to the brothers in the west who make hijrah we stick to this."
22 What does "hijrah" refer to?

23 A. "Hijrah" refers to a migration. It's a term used for
24 migration of an individual from a non-Muslim country to a
25 country who is Muslim and is Islamic.

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1 Q. And when you said in that message we stick to this to
2 communicate with brothers in the west who make hijrah, what did
3 you mean by "this"?

4 A. I was referring to the Threema account that we were
5 utilizing here to communicate.

6 Q. And what was your reason for including that detail?

7 A. I wanted to convey to the defendant that we utilized the
8 encrypted messaging app to talk to individuals in the West
9 because of how security conscious the defendant had been in the
10 past with us, so I wanted to communicate that this was an
11 encrypted messaging app and this is how we communicate to
12 individuals in the West on this encrypted app.

13 Q. And next if we could pull up Government Exhibit 2-106?

14 A. Yes. This is again a screen capture of messages that I
15 sent to the defendant using the Threema app. The new message
16 is the lower green bubble again, indicated by the 4:46 p.m.
17 time stamp.

18 Q. And in that message, you told the defendant, "The group of
19 brothers im' helping that get people to dawlah have 2 very
20 trusted brothers in Uk who buy us Google gift cards and send us
21 the codes on the back so we can by accounts on threema."

22 When you talked about the brothers that get people to
23 dawlah, first of all, what does "dawlah" refer to?

24 A. "Dawlah" is a term used to refer to the Islamic State. It
25 could be the Islamic State in Syria; it could be the Islamic

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1 State in Iraq.

2 Q. And what did you mean when you talked about brothers that
3 get people to dawlah?

4 A. Brothers, I was referring to ourselves, so brothers
5 meaning other individuals affiliated with ISIS getting
6 individuals to dawlah.

7 Q. And so if they get them to dawlah, would these essentially
8 be recruiters for ISIS?

9 A. Correct, yes.

10 Q. And you used the term "U.K." in there. What does "U.K."
11 stand for?

12 A. The United Kingdom, England.

13 Q. All right. And, Special Agent Sikorski, next I'd like to
14 pull up Government Exhibit 2-107. And what is, what is 2-107?

15 A. Again, it is a picture of the cell phone that I was
16 utilizing to communicate on Threema. Again, the newest message
17 is the one that you can see highlighted now at the bottom,
18 indicated -- there's a glare there, the flash on the camera,
19 but it says 4:51 p.m., the time stamp on which I sent the
20 message.

21 Q. And is this a continuation of your July 18 Threema message
22 to the defendant?

23 A. Yes, it is.

24 Q. And in that message, what does the "blessed operation in
25 Belgium" refer to?

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1 A. I was referring to the ISIS-related attacks that occurred
2 in Belgium in and around the summer of 2016 in which an airport
3 and another location were attacked.

4 Q. And then also in that message, what does the "operation in
5 Nice" refer to?

6 A. I was referring to the ISIS operation that occurred in
7 Nice, France. Nice is a city in France in which ISIS conducted
8 an attack on civilians.

9 Q. And what did you tell the defendant about how those two
10 operations in Europe impacted ISIS's ability to get more Google
11 codes?

12 A. I specifically told him that we only had a few codes left
13 and they won't be able to start again after those operations.
14 So the operations were impacting due to security increases the
15 amount of codes that we could receive.

16 Q. Next if we could turn to Government Exhibit 2-108? And
17 what is 2-108?

18 A. 2-108 is again a picture of the cell phone that I was
19 using to communicate on Threema. Again, the newest message is
20 the one that you can see highlighted here that was sent at 4:56
21 p.m.

22 Q. And what did you tell the defendant that your group needed
23 in lieu of the e-mail accounts that the defendant had talked
24 about previously?

25 A. We, we told the defendant we needed more of the Google

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1 codes.

2 Q. And how, how can someone obtain these Google codes?

3 A. Google codes are similar to a gift card, so Google codes
4 can be purchased by going to any type of a store, you know,
5 Walmart, your Target, your Best Buys, and purchasing what's
6 known as a Google Play card. On the back of that card is a
7 code just like a gift card. That code is then redeemable
8 online to purchase things like Threema accounts, to purchase
9 things from the Google Play store, whether it be apps, games,
10 but it's very similar to buying a gift card, taking the code
11 off the back of the gift card, and utilizing that code as
12 monetary value to buy something.

13 Q. And in that message on 4:56 p.m., when you told the
14 defendant, "We have a few brothers waiting for a while now
15 until we can get them our contact info and cannot creat any new
16 accounts," what brothers were you referring to there?

17 A. I was referring to the brothers that we had previously
18 talked about who we talked about with the defendant who we were
19 looking to bring over to dawlah in order to fight on behalf of
20 ISIS.

21 Q. And in the last sentence of that message, you told the
22 defendant, "These brothers are being pushed to wilayat sirte in
23 Libya." What is "wilayat sirte"?

24 A. "Wilayat Sirte" refers to, "Wilayat" means province.
25 "Sirte" is a city or region of Libya. So "Wilayat Sirte" is

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1 basically the province or area in and around Sirte, Libya.

2 Q. So based on your messages to the defendant, what impact
3 would getting additional Google codes have on getting ISIS
4 fighters into Libya?

5 A. Those Google codes would allow us in dawlah, meeting Mo in
6 dawlah, to facilitate the travel of ISIS fighters into the
7 Wilayat Sirte area in Libya.

8 Q. And next if we could turn to Government Exhibit 2-109?
9 And, Special Agent Sikorski, what is this exhibit?

10 A. Again, this is a picture of the phone that I was
11 utilizing. The newest message is the lower green box that was
12 just zoomed in on here, and you can see this is a message that
13 I sent at 5 p.m.

14 Q. And in the second sentence of your message, you said that
15 if the defendant can only send a couple codes, that would be
16 okay. What codes were you referring to again there?

17 A. The Google Play card codes that we had just talked about.

18 Q. And what -- can you just read what you said in the first
19 sentence to the defendant?

20 A. "Their desire to fight for their religion is a inspiration
21 to us all."

22 Q. And what was the reason for including that detail in your
23 message?

24 A. We wanted to make it clear to the defendant that we --
25 these Google Play cards were going to be used to facilitate

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1 individuals into Libya who wanted to fight.

2 Q. And if we could next turn to Government Exhibit 2-110?

3 And what is Government Exhibit 2-110?

4 A. This is a picture of the phone again that I was utilizing.

5 You can see there's a, a variation in this picture. You can

6 see my messages were in green. The messages from the

7 defendant, so his responses, are the messages that appear in

8 the white bubbles to the left, and you can see that those

9 messages were sent on Thursday, July 21, 2016.

10 Q. Thank you. And yeah, we've zoomed in on that -- the first
11 message there that begins, "I see your messages were from the
12 18th." And after talking about how long it took your message
13 to arrive, the defendant described a failed military coup in
14 Turkey. Did you know what he was talking about there?

15 A. Yes. In and around July of 2016, there was a highly
16 publicized on national news and covered live on a lot of news
17 organizations a military coup attempt in Turkey to overthrow
18 the government, and that ultimately failed around the same day,
19 if not the -- that night.

20 Q. Thank you. Next if we could go to Government Exhibit
21 2-111?

22 A. Yes. Again, this is a screen capture of the phone that I
23 was utilizing to communicate on Threema. In this instance,
24 these are all messages sent by the defendant to my Threema
25 account.

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1 MR. GIBBS: Can we zoom in on the first large message
2 at the top there?

3 Q. After the defendant in that message to you talks about a
4 base in Djibouti, special soldiers, and frequenting bars, he
5 then says that base likely affects east and north Africa and
6 maybe Yemen, as opposed to, quote, where you are, though.

7 In your Threema communications with the defendant and
8 the earlier e-mail communications with the defendant, where did
9 the FBI always lead him to believe that Mo was located?

10 A. We always told the defendant or led him to believe that we
11 were in ISIS-controlled territory in Iraq or Syria and had
12 specifically mentioned that we were in Raqqah, Syria, at one
13 point.

14 MR. GIBBS: Next if we can zoom in on the next two
15 messages together?

16 Q. And in the message there at the top, what question did the
17 defendant ask about the cards?

18 A. He specifically asked, "Why were the brothers in UK told
19 to stop though?" Basically, it's just an abbreviation. He
20 asked why were they told to stop sending the cards.

21 Q. And then below that, the defendant said, "Inshallah more
22 codes will come your way." What does "inshallah" mean?

23 A. It's just an Islamic term for God willing.

24 Q. Okay. Next if we can go to Government Exhibit 2-112?

25 A. Yes. This is again a picture of the phone that I was

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1 utilizing to communicate with the defendant on Threema, and
2 again you see in green the message that I sent back to the
3 defendant. In this case, I sent it on Thursday, July 28, 2016,
4 at 1:54 a.m.

5 MR. GIBBS: And can we zoom in on -- yeah, thank you.

6 Q. Now, in the first sentence, you wrote, "The brothers in UK
7 stop getting codes to save for hijrah they have amazing comp
8 skills needed here and bec of Allah's will we were able to help
9 with there hijrah to khilafah."

10 First of all, what are "comp skills"?

11 A. I was referring to computer skills. I just abbreviated
12 "computer" to "comp" just for less characters.

13 Q. And when you wrote about saving for hijrah and helping
14 with their hijrah, what does "hijrah" mean?

15 A. Again, "hijrah" is a reference to individuals making a, a
16 move from a non-Islamic country to an Islamic country.

17 Q. And when you wrote about their hijrah to khilafah, what
18 does "khilafah" mean?

19 A. "Khilafah" is a reference to the Islamic State.

20 Q. And towards the end of that Threema message to the
21 defendant, you wrote, "any codes u can get will helpful and
22 allow us to help many make hijrah. Only need a few right now."

23 What did you mean when you said the codes would help
24 many make hijrah?

25 A. I meant by us obtaining the Google codes off of the Google

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1 Play cards, we would be able to facilitate the travel and talk
2 to those individuals on Threema, as I had previously mentioned
3 to the defendant, which would help us facilitate their travel
4 into Libya and ISIS-controlled territory.

5 Q. Next if we could take a look at Government Exhibit 2-116?

6 A. Yes. This is again a picture of the cell phone that I was
7 utilizing to communicate with the defendant, and there's a
8 series of new messages here indicated by the time stamps on the
9 left at 2:04 a.m., 2:11 a.m., and 2, I believe that says 18,
10 but again, this picture would have to be zoomed in for me to
11 verify that bottom one.

12 MR. GIBBS: All right. So let's zoom in on the
13 bottom one, 2:18 a.m.

14 THE WITNESS: Yes, it does say 2:18.

15 BY MR. GIBBS:

16 Q. And in this message, you started off talking about
17 Djibouti and how, quote, kufar have these drone in Djibouti.
18 What was that statement in response to?

19 A. That statement was in response to the defendant's message
20 previously indicating in talking about the base in Djibouti.

21 Q. And you end that message by saying, "they know khilafah
22 cont to expand in Libya and we have many ppl there even if
23 media won't report."

24 Who is the "they" you're referring to when you wrote
25 "they know khilafah continue to expand in Libya"?

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1 A. I was referring to the west, western governments, the U.S.
2 government and U.S. authorities.

3 Q. And who was the "we" you were referring to when you told
4 the defendant that we have many people in Libya?

5 A. ISIS.

6 Q. Next if we could turn to Government Exhibit 2-118? And
7 what is this?

8 A. This is again a picture of the cell phone that I was
9 utilizing to communicate with the defendant. In this case,
10 this is a message that the defendant sent me. Again, this is
11 similar -- the messages from the defendant are in the white on
12 the left-hand side of the message screen.

13 Q. Okay. And this one actually is a little blurry, and I
14 think we tried to zoom, and it's not legible, so I think we
15 have to keep it at this resolution, but, Special Agent
16 Sikorski, at the beginning of that message, where the defendant
17 said, "Yea, I'm careful. Disturbing to know they were somehow
18 watching my house like 4 years back," in your communications
19 with the defendant, did he frequently portray himself as
20 security conscious?

21 A. Yes.

22 Q. And how did that impact the way that you communicated with
23 him?

24 A. We had to make sure we were being security conscious with
25 the defendant, too. Obviously, we couldn't state things in the

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1 obvious that we would state with maybe other people we were
2 talking to because the defendant was security conscious and
3 indicated that to us in these three messages in previous
4 communications.

5 MR. GIBBS: And can we highlight that one sentence
6 that starts, "Last year I was in a flight," pull it up in
7 yellow?

8 Q. And the sentence we've highlighted that says, "Last year I
9 was in a flight and I'm nearly positive 2 agents were watching
10 me," is that an example of what you just testified to about the
11 defendant being security conscious?

12 A. Yes, I was.

13 Q. All right, if we can go to Exhibit 2-119?

14 A. Yes. Again, this is a picture of the phone I was
15 utilizing, and these are messages sent from the defendant to me
16 on the Threema account.

17 MR. GIBBS: And can we highlight the message in the
18 middle that begins, "Yeah, the bases they have are strong"?

19 Q. Can you just read that, if you're able to make it out?

20 A. Yes. The highlighted portion says, "Yeah, the bases they
21 have are strong. But the people in them leave a lot for
22 recreation."

23 Q. And did you understand what that was a reference to?

24 A. Yes. I understood that to be a reference to the fact that
25 the bases that individual is on that he had previously

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1 mentioned, the bases themselves are very strong, but the
2 individuals who work on those bases or are assigned to those
3 bases leave for recreation. So they leave to go to the
4 restaurants, to the stores, and things like that.

5 Q. Next, if we could pull up Government Exhibit 2-120?

6 And what is this exhibit?

7 A. Again, this is a continuation of the message. The exhibit
8 is a picture of the cell phone I was utilizing to communicate
9 with the defendant on Threema, and this is a continuation of
10 the messages that the defendant sent me on the application.

11 MR. GIBBS: And if we can just highlight the message
12 at the bottom?

13 Q. And if you could just read that? If you can make it out?

14 A. It says, "oh, and YOU are the smart one. Allah blessed
15 you with the intelligence and wisdom to stay off their radar
16 until you reached your objective."

17 Q. And when the defendant talked in that message about
18 staying off their radar, what was your interpretation of who
19 "their" was referring to?

20 A. The U.S. government, the FBI, U.S. authorities.

21 Q. And next, if we could go to Government Exhibit 2-127? And
22 what is 2-127?

23 A. 2-127 is a picture of the cell phone that I was utilizing
24 to communicate with the defendant. This picture is of a new
25 Threema account.

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1 Q. All right. So there's something different about this
2 account than the ones you previously testified about?

3 A. Yes, there is.

4 Q. And what is different about this Threema account?

5 A. This Threema account is new. You can see at the top it no
6 longer says that HWM account. It has a, what I refer to as a
7 tilde, the little ~ symbol, and the capital letter L, as you
8 can see highlighted in yellow there. This is not the previous
9 account that I was communicating with the defendant on.

10 Q. And just for the record, all the Threema messages up to
11 this point we've been -- you testified about were from the
12 defendant's previous Threema account?

13 A. Yes, they were.

14 Q. And other than the defendant, did you give your Threema
15 account information to anyone else?

16 A. No, I did not.

17 Q. And was the message in this, we'll call this the ~ Threema
18 account, was this consistent with what you and the defendant
19 had been communicating about for the last two weeks?

20 A. Yes, it was. This Threema account began sending me Google
21 Play Card codes.

22 Q. And actually, if we can just go back real quickly to I
23 believe it's the last exhibit, 2-120? Or 126, I apologize.

24 A. Yes.

25 Q. Do you see the third message up from the bottom, the one

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1 about Inshallah, the brother got arrested? Is that it?

2 THE COURT: I don't think that's the right exhibit.

3 BY MR. GIBBS:

4 Q. Yes, let's go to 2-120.

5 A. Yes, I do. The third message from the bottom now
6 highlighted in yellow begins, "Inshallah the brother that got
7 arrested."

8 Q. And this is a message from the defendant to your Threema
9 account, correct?

10 A. Yes, it is.

11 Q. Do you know what brother he was referring to there?

12 A. Yes, I do.

13 Q. And who was that?

14 A. It was an individual -- do you want me to name him?

15 Q. Yes.

16 MR. SMITH: Objection, Your Honor.

17 THE COURT: Wait. What's the basis for the
18 objection?

19 MR. SMITH: The objection is it's speculation who was
20 the defendant referring to.

21 MR. GIBBS: Well, I think -- I can rephrase the
22 question.

23 THE COURT: All right.

24 BY MR. GIBBS:

25 Q. When the defendant referred to the brother that got

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1 arrested making dawah will be okay, do you understand who that
2 was a reference to?

3 A. Yes, I did. It was a reference to an individual that the
4 defendant and I had previously talked about on Threema that
5 stuck his foot around the corner. That individual was an
6 individual by the name of Peshwaz Waise.

7 Q. And that's an individual here in the Eastern District of
8 Virginia, correct?

9 A. Yes. He's in the Northern Virginia area and known to the
10 defendant.

11 Q. All right, thank you.

12 And while we're on this, so, you know, we were
13 talking about that ~ account. This particular message had the
14 HWM55PPKH at the top, correct?

15 A. Yes, it did.

16 Q. All right. So let's go back to the ~ account, which is
17 2-127.

18 A. Yes.

19 Q. In total, during the time you were impersonating Mo on
20 these -- on this Threema account, how many different Threema
21 accounts did the defendant use to communicate with you?

22 A. Two total.

23 Q. And what did -- well, first of all, let's go ahead and
24 highlight the message at the top there. It's not extremely
25 easy to see, so if you could just read that, I would appreciate

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1 it.

2 A. It says, "Respond to verify receipt...may not answer
3 depending on when as this device will be destroyed after all
4 are sent to prevent the data being possibly seen on this end in
5 the case of something unfortunate."

6 Q. And who came up with that idea of destroying the device?

7 A. The defendant.

8 Q. And down below where the defendant said, "after all are
9 sent," what did he actually send in the third bubble down below
10 there?

11 A. In the third bubble below are Google Play codes or Google
12 codes. Each of those codes is valued at \$10.

13 Q. And who came up with the idea of actually sending the
14 Google Play codes to you on a second Threema account?

15 A. The defendant.

16 Q. And you said that those codes at the bottom, those are
17 Google codes?

18 A. Yes, they are.

19 Q. And then turning to Exhibit 2-128, if we can just bring
20 that up for a moment? And then if we can go to 2-129?

21 Are both of those exhibits, are they both a
22 continuation of those Google codes from the defendant?

23 A. Yes, they were.

24 Q. And where were you when you received these gift card
25 codes?

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1 A. I believe I was specifically in -- at the time I received
2 them, on the phone.

3 Q. Well --

4 A. I believe I was in Washington, D.C., or at my house in
5 Northern Virginia. I don't remember exactly the first time
6 that I noticed that these were actually received.

7 Q. And what did you ultimately do with the gift card codes
8 that the defendant sent you?

9 A. I took those codes and created a separate Google account
10 at the Washington Field Office in Washington, D.C., and
11 redeemed each of those codes for the dollar amount indicated.
12 Some of the codes were redeemed for \$10, and some of them were
13 indicated for -- redeemed for \$15. Each of the values matched
14 what were sent, either value 15 or value 10, as indicated in
15 those messages.

16 Q. And was there a reason that you cashed those codes right
17 away?

18 A. Yes. We wanted to make sure that the defendant, if he was
19 able to track if the codes were redeemed, that he saw that the
20 codes were redeemed immediately because we needed to use them
21 immediately, as we had indicated, to facilitate the brothers
22 over to ISIS-controlled territory.

23 Q. And what was the total value of the gift card codes that
24 the defendant sent you?

25 A. The total value was \$245.

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1 Q. And in the last message on Exhibit 2-129, can you read
2 what you said to the defendant in that green bubble after he
3 sent the last of the gift card codes?

4 A. "MashaAllah may Allah reward you for your efforts. This
5 will help the brothers from Sudan seeking to fight in path of
6 Allah in khilafah."

7 Q. And based on what you were telling the defendant, where
8 would those brothers be fighting in the path of Allah?

9 A. We told them they were being sent to that Wilayat Sirte
10 area of Libya.

11 Q. And what date did you send that Threema message to the
12 defendant?

13 A. I sent that on July 29, 2016.

14 Q. And then if we can turn to Government Exhibit 2-130?

15 Now, the previous message you just testified about
16 that you sent, was that sent to the defendant's original
17 Threema account or to his second one?

18 A. That was that second account, indicated by the ~L account.

19 MR. GIBBS: And so in Exhibit 2-130 -- can we
20 highlight the -- yeah, you got the bottom two? Thank you.

21 Q. What does the -- on that green message from you, there's a
22 little symbol next to that of an eye, it looks like?

23 A. Yes. We haven't previously talked about this, but the
24 Threema application has a built-in feature that allows the
25 individual to see when the other end user reads the message.

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1 So in this case, you can see the message indicated by the
2 actual eye indicates that the message was read at 10:41 a.m.,
3 and if you go to the previous, you can see the envelope that I
4 described previously means when I sent it.

5 Q. And then after reading that or, you know, after the symbol
6 of the eye was on there, the message at the bottom in gray, who
7 was that from?

8 A. That was from the defendant, the response to what I had
9 said in the green bubble.

10 Q. And can you just read what the defendant said in that
11 message to you?

12 A. Yes. There's an emoji with a single index finger being
13 pointed up, and then it says, "glad it came through. Getting
14 rid of device now..fo real. Gonna eat the Sim card. Have a
15 good day."

16 Q. And who brought up this idea of getting rid of the device?

17 A. That was the defendant.

18 Q. And who brought up this idea of eating the SIM card?

19 A. That is the defendant.

20 Q. What is a SIM card?

21 A. The SIM card is the little card that's in the back of your
22 phone. It is a plastic-metallic chip that controls the IMEI
23 number, the IMSI number and things like that, or just the IMSI
24 number. I may be mistaken there. But it's basically the
25 control card for the phone that allows the phone to communicate

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1 with the cell towers and things.

2 Q. And was this last message from the ~ Threema account?

3 A. Yes, it was.

4 Q. So if we could go to Government Exhibit 2-121? What is
5 2-121?

6 A. Again, this is a picture of the phone that I was utilizing
7 to communicate with the defendant. In this case, we are back
8 to the original defendant's HWM Threema account.

9 Q. And can you read what you said in the first sentence of
10 that message to the defendant about the brothers in Sudan?

11 A. Yes. It says, "Salaam akhi. The brothers in Sudan will
12 be grateful for your help."

13 Q. And then further down in that message, you said,
14 "Sometimes ops last for few days or week depend on rafidi moves
15 when were out." What were you referring to when you talked
16 about ops lasting for a few days?

17 A. I was referring to the operations in which Mo, who I was
18 impersonating, was going out and fighting on behalf of ISIS.

19 Q. And what does "rafidi" mean?

20 A. "Rafidi" is a term used, it's a -- I think the literal
21 definition is something like rejectionist, but it's a term used
22 to describe Shia Muslims.

23 Q. At the end, you said, "Your message gives strength and I
24 let brother know we have more codes bec of trusted brothers in
25 dar al kufar." What does "dar al kufar" refer to?

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1 A. Just land of a non-Believer. Literal translation could be
2 the West, the U.S. and Europe.

3 Q. And which trusted brothers in Dar al-Kufr were you
4 referring to in that message?

5 A. The defendant.

6 Q. Now, if we could next go to Government Exhibit 2-122? And
7 what is 2-122?

8 A. 2-122 is again a picture of the phone I was utilizing to
9 communicate with the defendant on, and again, this is the
10 original HWM account, and you can see that the new message here
11 is the message the defendant sent me in the lower gray box.

12 Q. Can you just read what the defendant said in the message
13 in that gray box?

14 A. It says, "Rafida rats. Allah bless you. Stay safe.
15 Waalikom salam."

16 Q. Next, if we could turn to Government Exhibit 2-123?

17 A. Yes. Again, this is a picture of the phone I was
18 utilizing to communicate with the defendant on Threema with.
19 There are two new messages indicated in the green boxes here
20 that I sent to the defendant.

21 MR. GIBBS: And I believe we have the first message
22 highlighted on the screen at the moment. If we can zoom in on
23 the second one next?

24 Q. Now, in that message, after writing about the coup attempt
25 in Turkey, you told the defendant, "Border with Sham just to

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1 large for them to lose thousands at once." What does "Sham"
2 refer to?

3 A. "Sham" refers to the Islamic State in Syria, basically the
4 actual territory.

5 Q. And then towards the bottom of that message, you talked
6 about the Khilafah needs brave brothers and sisters, and then
7 you said, "We needed more brothers for fights so we move them
8 before sister."

9 What fight was that a reference to?

10 A. Just the general fight that ISIS was fighting with the
11 Iraqi government, the U.S.-backed coalition, and the Syrian
12 government.

13 Q. And then if we could turn to Government Exhibit 2-125?
14 What is 2-125?

15 A. Again, it's a picture of the phone that I was
16 communicating with the defendant utilizing Threema, and the new
17 messages here sent on Thursday, August 2, 2016, are messages
18 the defendant sent me, as indicated in the gray bubbles to the
19 left.

20 MR. GIBBS: All right. And if we could pull up that
21 first gray bubble that starts, "Glad you weren't on ops for
22 long"?

23 Q. Special Agent Sikorski, in that first message to you, what
24 did the -- what explanation did the defendant give for why the
25 Turkish border was harder to get through now?

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1 A. Because they had bent to Zionist pressure.

2 MR. GIBBS: And then if we could blow up the second
3 bubble?

4 Q. Now, about halfway down, the defendant said, "To be honest
5 I would like to buy a slave..seriously, lol, but I heard the
6 supply is low..inshallah a large crop of Alawi women will fall
7 into the hands of the mujahedeen."

8 What does "mujahideen" mean?

9 A. It's a term used for an Islamic fighter.

10 Q. And what does "Alawi" mean?

11 A. "Alawi" refers to a group or sect of Muslims in Syria and
12 others parts of the Middle East.

13 Q. And did you understand the defendant's reference to hoping
14 a large crop of Alawi women would fall into the hands of
15 mujahideen?

16 A. Yes. I --

17 MR. SMITH: Objection as to speculation as to
18 defendant's mindset.

19 THE COURT: I'm going to sustain the objection.

20 BY MR. GIBBS:

21 Q. And, Special Agent Sikorski, in your communications with
22 the defendant, who was the only one to bring up an interest in
23 buying an Alawi slave?

24 MR. SMITH: Objection. Leading.

25 THE COURT: Well, more than that, I think we're

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1 getting beyond the scope of what's at issue in this case, so
2 I'll sustain the objection.

3 BY MR. GIBBS:

4 Q. And, Special Agent Sikorski, if you can turn to Government
5 Exhibit 2-126?

6 And if we can -- first of all, what is 2-126?

7 A. Again, it is a picture of the cell phone that I was
8 utilizing to communicate with the defendant via Threema on.

9 MR. GIBBS: And if we can zoom in on the second
10 message from the bottom?

11 Q. Now, in that second message, the defendant said, "Please
12 let me know if you find any brothers from Derna or Abu Salem
13 martyrs brigade."

14 First of all, where is Derna located?

15 A. It's a city within Libya.

16 Q. And in your Threema communications with the defendant, who
17 was the only one to bring up the Abu Salim Martyrs Brigade?

18 MR. SMITH: Objection. Leading.

19 THE COURT: No, no.

20 MR. GIBBS: That's not leading.

21 THE COURT: That's not leading. Overruled.

22 THE WITNESS: It was the defendant.

23 BY MR. GIBBS:

24 Q. And in terms of the defendant's request to tell him if you
25 found any brothers from either Derna or the Abu Salim Martyrs

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1 Brigade, when you corresponded with him, where did you always
2 lead him to believe that Mo was located?

3 A. In ISIS-controlled territory in Syria or Iraq.

4 Q. And then if we could -- we can take that one down.

5 If we can go to the message just above that? And in
6 the message above that, the defendant talked -- well, can you
7 read after the first sentence, the one that begins, "I was
8 talking to a very smart sister"?

9 MR. SMITH: Objection. Relevance. Relevance.

10 MR. GIBBS: I'm going to ask a question about that.

11 THE COURT: You need to tie it up. All right,
12 overruled.

13 THE WITNESS: "I was talking to a very smart sister
14 from north Africa, she didnt have a good view of the khalifa,
15 or any mujahideen really...."

16 Q. And then what does it say after the dot-dot-dot?

17 A. "But that isnt surprising due to the brainwashing in those
18 corrupt mosques..(the jihad is within our selves, jihad of the
19 pen, blah, blah, the usually emotional stuff, zero evidence.)"

20 Q. And was this the first time the defendant had brought up
21 this really smart sister from north Africa?

22 A. Yes.

23 Q. And when he used the term "khalifa," again, what does the
24 term "khalifa" mean?

25 A. The Islamic State.

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1 Q. And he said, "a good view of the khalifa or any mujahideen
2 really." Again, remind us what "mujahideen" means.

3 A. "Mujahideen" is a term used for an Islamic fighter.

4 Q. All right, thank you.

5 Now, Special Agent Sikorski, what was the date of the
6 defendant's last Threema message to you? You may have to go
7 back. Let's go --

8 A. I have to look back, but I believe it was on August 2, but
9 I'd have to verify through the exhibit.

10 Q. Right. Let's go back to 2-125. That will make it a
11 little easier.

12 A. Yes. It was there Tuesday, August 2, 2016.

13 Q. And when was the defendant arrested?

14 A. The next day.

15 Q. So August 3, 2016?

16 A. Yes.

17 Q. And what was your role on August 3, 2016?

18 A. My role on August 3, 2016, was to respond to the Metro
19 transit facility located in Springfield, Virginia, to secure
20 the defendant's vehicle and locker simultaneously to the
21 defendant's arrest.

22 MR. GIBBS: And, Your Honor, at this time, I have a
23 stipulation to read into the record.

24 THE COURT: All right.

25 MR. GIBBS: Stipulation No. 6. The United States and

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1 the defendant hereby stipulate and agree that Government
2 Exhibit 3-100 is a photograph that accurately depicts defendant
3 Nicholas Young's truck on August 3, 2016, before it was
4 searched by the FBI."

5 And we would ask to move in Government Exhibit 3-100
6 at this time.

7 MR. SMITH: No objection.

8 THE COURT: All right, it's in.

9 (Government's Exhibit No. 3-100 was received in
10 evidence.)

11 MR. GIBBS: And if we could just pull that up?

12 Q. What is this, sir?

13 A. That is a photo taken of the defendant's truck on the
14 morning of August 3 in Springfield, Virginia.

15 Q. And then I have another stipulation to read, which is
16 Stipulation No. 9, where the United States and the defendant
17 hereby stipulate and agree that Government Exhibit 3-115 is a
18 photograph that accurately depicts a bumper sticker on
19 defendant Nicholas Young's truck on August 3, 2016, before it
20 was searched by the FBI.

21 And we have would ask to move in Government Exhibit
22 3-115.

23 MR. SMITH: No objection.

24 THE COURT: All right, it's in.

25 (Government's Exhibit No. 3-115 was received in

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1 evidence.)

2 MR. GIBBS: If we could publish that?

3 Q. And, Special Agent Sikorski, you testified about your role
4 in the -- on the day of the arrest of the defendant. What
5 role, if any, did you have in transporting the defendant's
6 truck on August 3, 2016?

7 A. My role in transporting the defendant's truck was myself
8 and another special agent from the FBI watched that vehicle be
9 loaded onto a flatbed tow truck. That tow truck then drove
10 with us behind it all the way from Springfield, Virginia, to a
11 location in Washington, D.C., where the vehicle was going to be
12 secured pending the issuance of a search warrant.

13 Q. All right. And I'd like to read into the record
14 Stipulation No. 7, which says, "The United States and the
15 defendant hereby stipulate and agree that Government Exhibit
16 3-101 is a photograph that accurately depicts the mode of
17 transport of defendant Nicholas Young's truck to an FBI
18 facility after it was seized on August 3, 2016.

19 And we would ask to move in Government Exhibit 3-101.

20 MR. SMITH: No objection.

21 THE COURT: All right, it's in.

22 (Government's Exhibit No. 3-101 was received in
23 evidence.)

24 MR. GIBBS: And if we could publish that?

25 Q. So you just testified a moment ago about the flatbed that

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1 the truck was transported on. Is this what it looked like that
2 day?

3 A. Yes. This is an exact depiction of what it looked like
4 when it arrived at the facility in Washington, D.C.

5 Q. And who was in charge of making sure the truck stayed
6 secured until it could be transported?

7 A. I was.

8 Q. And where -- you said -- and what were you doing during
9 the time the truck was being moved?

10 A. Myself and another special agent were traveling in my
11 FBI-issued bureau car directly behind this flatbed tow truck
12 with that truck on the back of it, following it to this
13 facility in D.C.

14 Q. And what happened -- when you got to D.C., what happened
15 before the truck was taken off of the trailer?

16 A. Myself and the other agent were waiting on the side of
17 this ramp. As you can see, that goes up into the open door.
18 We were alerted by the tow truck driver that as he began to
19 undo the straps of the vehicle, the tow truck driver alerted us
20 that there was a cell phone lying on the flatbed of the tow
21 truck in between the two rear wheels.

22 MR. GIBBS: And, Your Honor, at this time, we would
23 offer into evidence Exhibits 3-102 and 3-103, which are
24 photographs of that phone.

25 THE COURT: Any objection?

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1 MR. SMITH: No objection.

2 THE COURT: They're in.

3 (Government's Exhibit Nos. 3-102 and 3-103 were
4 received in evidence.)

5 MR. GIBBS: Let's pull up 3-102 first.

6 Q. Now, Special Agent Sikorski, who took this photo of the
7 phone?

8 A. It was either myself or Special Agent Miriam Fontanez. We
9 were both present. I don't specifically remember which one of
10 us actually took the picture, but we were both present when we
11 were taking this evidence.

12 Q. And you testified a moment ago about seeing the phone on
13 the flatbed on that day. Is this the way it looked when it was
14 pointed out to you?

15 A. Yes. That is an exact -- that is the exact location that
16 I first observed it. This is an unmoved photo.

17 Q. And yeah, if we can look at Government Exhibit 3-103, that
18 might give you a better view. What is this?

19 A. Again, this is a zoomed-in picture of that cell phone
20 lying on the bed of the flatbed tow truck.

21 Q. And what kind of phone was this?

22 A. It was a ZTE phone.

23 Q. And the color is?

24 A. It was a, a black phone. It had a clear, large screen on
25 the front side of it. This is a picture of the back side, as

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1 it was laying on the flatbed when we saw it.

2 Q. And was there anything unusual on the phone itself?

3 A. Yes. On the front of the phone, where you would normally
4 see the front-facing camera, there was pieces of Scotch Tape,
5 clear Scotch Tape covering the front-facing camera.

6 Q. And so what happened to the phone after you and Mirian
7 Fontanez found it on the trailer?

8 A. We took possession of it as FBI evidence at that location.
9 From that location, we responded directly to the Washington
10 Field Office in Washington, D.C., and entered that phone into
11 FBI evidence.

12 Q. And is that standard procedure on how you handle evidence
13 when you seize it at the FBI?

14 A. Yes.

15 Q. And this was you and Special Agent Fontanez that took the
16 phone back to the Washington Field Office?

17 A. Yes, it was.

18 MR. GIBBS: Your Honor, at this time, I would like to
19 read Stipulation No. 10, which says that the United States and
20 the defendant hereby stipulate and agree that Government
21 Exhibits 3-302 through 3-226 are messages found by the FBI on
22 the cellular telephone marked as Government Exhibit 3-200.

23 THE COURT: All right, is there any objection to
24 those exhibits going in, that is, 3-202 through 226 and also
25 3-200?

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1 MR. SMITH: No objection.

2 THE COURT: All right, they're all in.

3 (Government's Exhibit Nos. 3-200 and 3-202 thru 3-226
4 were received in evidence.)

5 MR. GIBBS: Thank you.

6 Q. Special Agent Sikorski, prior to your testimony today, did
7 you look at 3-202 through 3-226 from this phone?

8 A. Yes, I did.

9 Q. And what were those exhibits?

10 A. Those exhibits were the forensic examination of the phone
11 that I found on the bed of that tow truck, and they are the
12 other end of the Threema communications that I was
13 communicating with my phone. These exhibits are the other end
14 of that that were found on that phone that was lying on the bed
15 of the tow truck.

16 Q. And so if we could -- I'm not going to display all of them
17 or even very many of them because you said these are the other
18 end of the messages. So the defendant's messages you testified
19 about earlier were on this phone?

20 A. Correct. Both the defendant's messages to me and my
21 messages to the defendant were found on that phone that was
22 recovered from the bed of that flatbed tow truck.

23 MR. GIBBS: Okay. So I just want to pull up a couple
24 of these, but if I could pull up 3-202? And if it's possible
25 to zoom in a little bit?

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1 Q. Now, Special Agent Sikorski, can you explain what this is?

2 A. That is a picture of the phone that I found on the bed of
3 the flatbed tow truck. You can see that clear Scotch Tape that
4 I indicated previously in the upper right-hand corner, and then
5 this specific HWM account is a -- is the Threema account that I
6 was communicating on with that other phone that you saw the
7 previous Threema messages from.

8 Q. Right. And we talked about the Threema account. This was
9 the first Threema account that you were communicating with the
10 defendant, correct?

11 A. Yes, it was.

12 Q. Not the one that was used to send the codes?

13 A. Correct. This is the HWM account, not that account with
14 the ~L that I previously described.

15 Q. And then if we can go to 3-203, what is 3-203?

16 A. 3-203 is a picture of that ZTE phone, and again, this is a
17 picture of the Threema accounts and messages on that phone.

18 Q. And do you recognize any of the accounts in the middle of
19 that -- or on that phone anywhere?

20 A. Yes. I only recognize the lower account that's indicated
21 with a UNTDSKA7. That is my Threema account that I was
22 utilizing to communicate with the defendant.

23 Q. And off to the side of that account you were using to
24 communicate with the defendant, do you see a letter there?

25 A. Yes. Highlighted in yellow, this is again that same

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1 symbol that I referred to as a tilde. You see the ~V, with a
2 capital V.

3 Q. And do you recognize the reference to the V?

4 A. Yes. That's a reference to the V4Vendetta and to the V
5 that the defendant had initially called me when he initially
6 said, "Salam alicom V" to the first Threema message he had sent
7 me.

8 MR. GIBBS: And then just one more on this phone from
9 the truck flatbed. If we could pull up 3-224? If we can zoom
10 in on that a bit?

11 Q. Now, did you recognize this message on the phone from the
12 flatbed as one that you had received previously?

13 A. Yes. This is one of --

14 MR. SMITH: Objection, Your Honor. Relevance.

15 THE COURT: No. It's connecting the dots, which the
16 government has the obligation to do. Overruled.

17 THE WITNESS: Yes. This is the message that the
18 defendant sent me on my phone that I received from my Threema
19 account. This is the actual message on that phone that he sent
20 me.

21 BY MR. GIBBS:

22 Q. And, in fact, at the top of the phone, you can actually
23 see "ZTE." That refers to the type of the phone?

24 A. Yes. That is the, I believe the brand of that particular
25 phone.

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1 Q. Now, you testified earlier, Special Agent Sikorski,
2 that -- well, first of all, you testified that you looked at
3 all the messages on this black ZTE phone from the flatbed
4 truck, correct?

5 A. I looked at the exhibits from the Threema messages on that
6 phone.

7 Q. Right. And you testified earlier that the codes that the
8 defendant actually sent you were from a second tilde account.
9 Do you recall that?

10 A. Yes, I do.

11 Q. And in the last message the defendant sent, he said he was
12 getting rid of the device and he was eating the SIM card. Do
13 you recall that message?

14 A. Yes, I do.

15 Q. So were any of those tilde messages found on this black
16 ZTE gophone?

17 A. No, not to my knowledge.

18 MR. GIBBS: Your Honor, at this time, I've got
19 another stipulation to read into the record. It's Stipulation
20 No. 8.

21 The United States and the defendant hereby stipulate
22 and agree that Government Exhibits 3-104 through 3-114,
23 Government Exhibits 3-117 through 3-121, Government Exhibit
24 3-125, and Government Exhibit 3-300 are items that were found
25 by the FBI in defendant Nicholas Young's truck after his

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1 arrest.

2 THE COURT: All right. Do you want to move all of
3 those in at this point or not?

4 MR. GIBBS: I would like to, Judge, and I'll have the
5 agent talk about some of those right now.

6 THE COURT: Any objection?

7 MR. SMITH: Your Honor, only to 3-300. It's a Sony
8 Cyber-Shot camera seized from the truck. We don't know what
9 the government intends to do with the camera, whether it
10 intends to just present the camera.

11 THE COURT: All right. That's the last one in the
12 series, so let's wait and see.

13 So at this point, 104 through 114, 117 to 121, 125
14 are in, correct?

15 MR. GIBBS: Correct.

16 THE COURT: All right. 300 is not yet in.

17 (Government's Exhibit Nos. 3-104 thru 3-114, 3-117
18 thru 3-121, and 3-125 were received in evidence.)

19 MR. GIBBS: And then at this time, Judge, I would
20 like to have the, Special Agent Sikorski take a look at Exhibit
21 3-117. Let's just pull that up.

22 Q. Special Agent Sikorski, what is 3-117?

23 A. 3-117 is a picture of a FedEx office user card or stored
24 value card.

25 Q. Okay. And, in fact, there were a number of these FedEx

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1 stored value cards found in the defendant's truck on the day of
2 the arrest, correct?

3 A. I know of two.

4 Q. Okay. And in the investigation, we have a number of
5 e-mails that the defendant sent from the Essa Kobayashi e-mail
6 account that are in evidence, and we have a number of still
7 photos of the defendant in the FedEx. Now, were you able to
8 look at the date and times of some of those e-mails and the
9 FedEx photos and compare that with the transaction detail
10 history we got from FedEx to confirm if, in fact, there were
11 transactions on those dates?

12 A. Yes, I was.

13 Q. All right. And sort of a long, complex question, but
14 let's see if we can walk through this.

15 So 3-117, could we look at the back of that card,
16 Fabian?

17 And so there is a number on that. Do you see that?

18 A. Yes, I do. It's highlighted in yellow. It's RU402068209.

19 Q. And if we can pull up 3-117A, which is the transaction
20 detail history for that particular FedEx value card?

21 THE COURT: All right. Now, the subsections A or B,
22 whatever you've got, were not formally moved in, so is there an
23 A for each of these exhibits?

24 MR. GIBBS: I'm sorry, is there a page for?

25 THE COURT: Yeah. 117A is a separate exhibit from

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1 117. When you did that mass moving in, we didn't talk about
2 subgroupings of As or Bs. Is that expected to have happened?

3 MR. GIBBS: Well, I'd like to have the agent take a
4 look at 117A, and I would like to have it moved in at this
5 time.

6 THE COURT: What I'm saying is it's not in yet.

7 MR. GIBBS: Okay.

8 THE COURT: Okay. Is there any objection to 117A?
9 I'm assuming defense counsel have it. Mr. Smith, is there an
10 objection to 117A?

11 MR. GIBBS: Judge, I would note we have a
12 certification for this. This is a FedEx business record.

13 THE COURT: I understand that, but let's --

14 MR. SMITH: No objection.

15 THE COURT: All right. It's now in, and you may
16 publish it.

17 (Government's Exhibit No. 3-117A was received in
18 evidence.)

19 MR. GIBBS: All right. First of all, let's do it
20 this way: Can we pull up Exhibit 1-219 to start with? If you
21 could zoom in on the top of that? This is an e-mail that's
22 already in evidence.

23 Q. And, Special Agent Sikorski, do you see the date on that
24 e-mail in 1-219?

25 A. Yes, I do.

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1 Q. And what is the date?

2 A. It is February 16, 2016.

3 MR. GIBBS: And then if we can pull up a second
4 exhibit, which is also already in evidence, it's 7-216A?

5 Q. And this is a -- do you recognize this exhibit?

6 A. Yes, I do. It's a photo of a FedEx facility and the
7 defendant on February 16, 2016.

8 Q. All right. So the same date as the prior e-mail?

9 A. Yes.

10 MR. GIBBS: All right. So let's go to the
11 transaction detail history 3-117A, if we can display that.
12 We'll have to blow that up.

13 Now, let's start at the top. Is there a way to
14 enhance the actual number of the FedEx card? And is there a
15 way to pull the other card, do them side by side?

16 THE COURT: Let's move this along. The jury, I
17 think, has the picture.

18 MR. GIBBS: Okay. And so let's just stick with the,
19 the exhibit on the right, which is the FedEx detail history.
20 And if we can bring that up by itself and blow it up a little
21 bit?

22 Q. And, Special Agent Sikorski, the date we were asking about
23 was February 16, 2016. For that particular FedEx card from the
24 defendant's truck, were you able to find any transactions where
25 that card was used at a FedEx on February 16, 2016?

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1 A. Yes. There are three transactions indicated in lines
2 No. 27, 28, and 29 that occurred on February 16, 2016.

3 Q. And were you able to make similar connections for other
4 transactions on those FedEx cards in preparation for your
5 testimony today?

6 A. Yes. I was able to connect at least three other
7 transactions in this same manner, linking the pictures with the
8 transaction dates and times from the FedEx transaction history.

9 MR. GIBBS: All right. And I won't make you go
10 through that again. Thank you, though.

11 And then, Judge, we have -- I have another
12 stipulation, and this relates to Government Exhibit 3-300. The
13 defendant -- the defense did not agree to that exhibit, which
14 was the camera from the truck.

15 Stipulation No. 11 says that the United States and
16 defendant hereby stipulate and agree that Government Exhibit
17 3-302 is a photograph that was found by the FBI on defendant
18 Nicholas Young's camera marked as Government Exhibit 3-300.

19 So we would ask to admit 3-302 and 3-300 into
20 evidence.

21 MR. SMITH: Your Honor, we stipulated to the
22 authenticity of the document, not relevance. We object to the
23 relevance of the document. If Your Honor looks at --

24 THE COURT: Let me take a look at it.

25 MR. SMITH: The defense objects to the relevance in

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1 connection with this particular witness.

2 THE COURT: I'll permit it. Overruled.

3 (Government's Exhibit Nos. 3-300 and 3-302 were
4 received in evidence.)

5 MR. GIBBS: Thank you, Your Honor. And if we could
6 publish 3-302?

7 And before I go to the next stipulation, I've just
8 got a couple more, Your Honor, I did not move in the other
9 FedEx transaction detail history, so 3-118A, 119A, and 120A are
10 three additional documents like the ones in 3-117A. We'd ask
11 to move those three in as well.

12 THE COURT: Any objection --

13 MR. SMITH: Well --

14 THE COURT: -- to 118A, 119A, and 120A?

15 MR. SMITH: No objection.

16 THE COURT: All right, all three are in.

17 (Government's Exhibit Nos. 3-118A thru 3-120A were
18 received in evidence.)

19 MR. GIBBS: And I'd like to read into the record
20 Stipulation No. 12: The United States and the defendant hereby
21 stipulate and agree that Government Exhibits 4-101, 102, 104,
22 105, 107 --

23 THE COURT: Whoa, whoa, slow down. 101, 102, 104,
24 105, 107, what?

25 MR. GIBBS: 108.

Sikorski - Direct

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1 THE COURT: Go ahead.

2 MR. GIBBS: 109, and 4-200 were found by the FBI in
3 the course of arresting defendant Nicholas Young on August 3,
4 2016.

5 MR. SMITH: No objection.

6 THE COURT: All right, they're all in.

7 (Government's Exhibit Nos. 4-101, 4-102, 4-104,
8 4-105, 4-107 thru 4-109, and 4-200 were received in evidence.)

9 MR. GIBBS: And if I could, there are two other
10 exhibits I'd like to show the agent. If we could pull up
11 Exhibit 4-102?

12 Q. Have you seen this document before, Special Agent?

13 A. Yes, I have.

14 Q. Do you recognize any of the markings on this document?

15 A. Yes. This document is actually upside down. If you were
16 to rotate it 180 degrees like was just done there, the top
17 UNTDSKA7, that is my Threema account that I was utilizing to
18 communicate with the defendant. You can see the word "Threema"
19 written there, which is the messaging app we were communicating
20 on, and the HWM5PPKH account is the defendant's account that
21 was communicating with me on the Threema application.

22 Q. All right. And then -- I've already rotated, unless you
23 could tell, but the other writing on there, do you recognize
24 that?

25 A. No.

Sikorski - Direct

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1 Q. Okay. That will be for a different witness.

2 Then if we can go to Government Exhibit 4-104? And
3 we're going to have to zoom in on the top of this exhibit, but
4 had you reviewed this previously, Special Agent Sikorski?

5 A. Yes, I had.

6 Q. And what is this?

7 A. It appears to be an advertisement or -- for a local
8 business, roti, with some words written on it.

9 Q. And as far as the words written on it, did you recognize
10 any of those words?

11 A. I did recognize at the very, very top, you can see
12 above "Keep your," now highlighted in yellow, it says "Essa
13 Kobayashi." That is the e-mail account of the defendant that
14 was communicating with the account being perceived to be Mo and
15 the V4Vendetta e-mail account.

16 Q. Thank you.

17 And then if we could, if I could have you take a look
18 at Government Exhibit 4-107, or if we can pull that up?

19 If I could indulge the CSO, I'd also like to have the
20 agent take a look at Exhibit 7-102, which is a paper document.

21 MR. SMITH: No objection.

22 THE COURT: All right, it's in. 7-102 is in.

23 (Government's Exhibit No. 7-102 was received in
24 evidence.)

25 BY MR. GIBBS:

Sikorski - Direct

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1 Q. All right. Do you have that there in front of you?

2 A. Yes, I have both 4-107 exhibit and 7-102.

3 Q. Okay. And were you able to compare those two?

4 A. Yes, I was.

5 Q. Okay. And 4-107 is a Best Buy receipt that was found in
6 the course of arresting the defendant, correct?

7 A. Yes, it is.

8 Q. And what is 7-102?

9 A. 7-102 is a Best Buy records, I'll refer to here as a
10 duplicate copy of records that the FBI obtained from Best Buy.
11 These two transactions are identical.

12 Q. Thank you.

13 And then, Special Agent Sikorski -- I've just got a
14 couple more stipulations, and I think we'll be done.

15 THE COURT: Well, give the jury some context. What
16 was bought? What does the receipt refer to?

17 BY MR. GIBBS:

18 Q. Yeah, can you go ahead and --

19 A. The receipt is from Best Buy, Best Buy in Fairfax,
20 Virginia, and there are \$100 worth, so ten \$10 Google Play
21 cards purchased from Best Buy from these receipts.

22 MR. GIBBS: And I believe 4-107, it's not upside
23 down, yeah, if we could enhance that a little bit?

24 And then finally while we're still on Best Buy, I'd
25 like to read into evidence Stipulation No. 14, which is: The

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1 United States and the defendant hereby stipulate and agree that
2 Government Exhibits 7-101, 7-102, 7-103, and 7-102 are
3 authentic business records of Best Buy, Inc.

4 THE COURT: 101, 102, and 103.

5 MR. GIBBS: Correct.

6 THE COURT: All right.

7 MR. SMITH: Your Honor, the defense objects on the
8 basis of cumulative evidence. This is unnecessary. These are
9 videotapes showing that the defendant walked into Best Buy.

10 MR. GIBBS: And I would make an offer of proof,
11 Judge, that is the evidence that he actually went in and bought
12 the receipt -- or bought the Google Play gift cards, or at
13 least some of them, and saved the receipts. The videos are
14 very short.

15 THE COURT: I'm going to overrule the objection.

16 They're in.

17 (Government's Exhibit Nos. 7-101 and 7-103 were
18 received in evidence.)

19 MR. GIBBS: All right, thank you.

20 And if we could play beginning with the first video
21 and just roll right through them?

22 And for the record, we'll start with 7-101-1 and then
23 play 7-101-2 and 7-101-3, which are three Best Buy surveillance
24 videos.

25 (Government's Exhibit Nos. 7-101-1 and 7-101-2 were

Sikorski - Direct

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1 played.)

2 THE COURT: How much longer is it like this? This is
3 not adding much.

4 MR. GIBBS: Yeah, go to the next one.

5 (Government's Exhibit No. 7-101-3 was played.)

6 MR. GIBBS: And finally, Judge, I've just got two
7 more stipulations. Stipulation 13: The United States and the
8 defendant hereby stipulate and agree that Government Exhibit
9 4-106 is a photograph that accurately depicts the backpack of
10 defendant Nicholas Young after his arrest on August 3, 2016.

11 We would ask to move in that exhibit.

12 MR. SMITH: No objection.

13 THE COURT: All right, it's in.

14 (Government's Exhibit No. 4-106 was received in
15 evidence.)

16 MR. GIBBS: If we could just publish it briefly?

17 And I'll read the last exhibit -- or last
18 stipulation, rather: The United States and the defendant
19 hereby stipulate in Stipulation No. 29, they stipulate and
20 agree that metadata displayed on photographs from electronic
21 media among the government exhibits is metadata that was found
22 by the FBI forensic examiners who examined the electronic
23 media.

24 THE COURT: Anything further?

25 MR. GIBBS: No, Judge. Thank you.

Sikorski - Cross

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1 THE COURT: All right. Mr. Smith?

2 MR. GIBBS: Thank you, Special Agent Sikorski.

3 THE WITNESS: Thank you.

4 MR. SMITH: Your Honor, we're going to be brief with
5 this witness.

6 CROSS-EXAMINATION

7 BY MR. SMITH:

8 Q. Good afternoon, Agent Sikorski.

9 A. Good afternoon.

10 Q. You testified when you began taking control of the alias
11 Mo's e-mail account, correct?

12 A. Yes.

13 Q. And approximately when was that? When did you take
14 control of that e-mail account?

15 A. It was in July of 2016. I never sent any messages on that
16 e-mail account. I only was in the receive mode.

17 MR. SMITH: So -- and could we put up GX, Government
18 Exhibit 1-221? This was -- I think -- can you blow it up?

19 Q. This is the first e-mail that you testified about this
20 afternoon, correct? It's from June 14, 2016?

21 A. Correct.

22 Q. You -- did you draft that e-mail, or was that drafted by
23 someone prior to you?

24 A. This was an e-mail sent by the defendant to --

25 Q. Excuse me, excuse me. Did you receive that e-mail once

Sikorski - Cross

615

1 you had taken control of Mo's account?

2 A. No. I was not in control of this account when this was
3 received.

4 Q. Okay.

5 A. I later viewed it, but this was not -- I did not have
6 control of this account until July of 2016.

7 Q. When you took control of the account in July 2016, did you
8 review the previous communications between the defendant and
9 the alias Mo's e-mail account to familiarize yourself with the
10 communications?

11 A. Yes, absolutely.

12 Q. And in order to properly communicate with Young as the
13 alias Mo from that point forward?

14 A. Yes, that's correct.

15 MR. SMITH: Okay. So -- and can you put Government
16 Exhibit 1-221 back up and blow it up?

17 Q. So Mr. Young's e-mail on this date was in response to a
18 prior communication from, from the alias Mo, correct?

19 A. Yes, that's correct.

20 Q. And, in fact, there were two prior communications that
21 this e-mail on June 14 was in response to, correct?

22 A. I would have to review to know that there was specifically
23 two, but this is definitely a response to previous messages.

24 MR. SMITH: Can we put up Government Exhibit 1-115?
25 And blow up the, blow up the first e-mail. The top, March 5.

Sikorski - Cross

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1 Q. Have you seen the March 5 e-mail from the alias Mo account
2 to Nicholas Young?

3 A. Yes, I have.

4 Q. And in that e-mail, does the alias Young -- or the alias
5 Mo ask -- broach the subject of communicating on a
6 surreptitious app in this exchange?

7 A. Yes.

8 Q. To the best of your knowledge, is this the first time that
9 the alias Mo raises the subject of using a secure app to
10 communicate with Young?

11 A. Yes. Right now, to the best of my knowledge, yes, it is.

12 Q. And to the best of your knowledge, is this the first
13 communication between Mr. Young and Mo from either party
14 indicating that there would be further communications on the
15 secure app?

16 A. Yes.

17 MR. SMITH: Thank you.

18 Can you put up Government Exhibit 1-116? Can you
19 blow up the -- yeah.

20 Q. Have you seen this e-mail before from the alias Mo account
21 to Mr. Young?

22 A. Yes, I reviewed it before.

23 Q. And what is the date on that e-mail?

24 A. It's April 18, 2016.

25 Q. And this is an e-mail from the alias Mo to Nicholas Young

Sikorski - Cross

617

1 that was following up on the previous e-mail we looked at,
2 Government Exhibit 1-115?

3 Let me rephrase that. Do you -- are you aware of any
4 e-mails exchanged between the alias Mo account and Nicholas
5 Young between March 5, 2016, which we just looked at, and the
6 e-mail in front of you, Government Exhibit 1-116?

7 A. Again, I would have to look at all of the communications
8 to confirm because I was not in control of these e-mail
9 accounts at the time, so I'm unable to specifically -- in
10 between those dates, I just don't remember unless I was shown
11 the actual full communication.

12 Q. So who was in control? Which agent was in control of the
13 alias Mo's e-mail account at this point?

14 A. I believe it was the Agent Cameron Siegfried.

15 MR. SMITH: Siegfried.

16 Your Honor, we move these two e-mails into evidence
17 as complete statements. The witness --

18 THE COURT: Wait, wait, wait. Aren't they already
19 in? I thought we've seen both of these.

20 MR. GIBBS: They are, Judge. I don't think -- I
21 think these are our exhibits.

22 MR. SMITH: We're moving them in, Your Honor, because
23 the government has not put a witness on to testify about these
24 exhibits.

25 THE COURT: Wait, wait, wait, wait. The exhibit

Sikorski - Cross

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1 numbers again are what? Government Exhibit --

2 MR. SMITH: Government Exhibit 1-115.

3 THE COURT: 115.

4 MR. SMITH: And Government Exhibit 1-116.

5 THE COURT: All right, they're both in evidence.

6 MR. SMITH: All right.

7 THE COURT: All right. In case they weren't. I
8 think they already are. They are.

9 BY MR. SMITH:

10 Q. The second e-mail on April 18, 2016, indicates that the
11 alias Mo e-mail account again requests that the defendant
12 Nicholas Young and the alias Mo communicate through a secure
13 app, correct?

14 A. Yes.

15 Q. And then if we go back to Government Exhibit 1-221, it's
16 dated June 14, 2016, correct?

17 A. It is.

18 Q. And it's from Nicholas Young to the alias Mo's account?

19 A. Yes, it is.

20 Q. Is this the first response that the defendant made to the
21 two e-mails we just looked at from March 2016 and April 2016?

22 A. Again, to the best of my knowledge right now, yes, it is.

23 Q. Thank you.

24 And does the defendant say in the e-mail in front of
25 you, Government Exhibit 1-221, "I don't really do the tech

Sikorski - Cross

619

1 thing...but I will inshallah message you on that app within the
2 week, likely before you read this message. I really don't
3 trust any electronic or email communication...don't feel
4 comfortable even on this...but inshallah that app will be
5 okay." Correct?

6 A. Yes, that's a direct quote from the e-mail.

7 Q. Did you testify earlier today that Mr. Young was the first
8 communicant between himself and the alias Mo to suggest
9 communicating on a secure app?

10 A. I do not believe so.

11 Q. So your testimony is it was the undercover informant, it
12 was the alias Mo that first suggested communicating on Threema?

13 A. Yes, that's my recollection.

14 Q. Okay. Agent Sikorski, you testified that it was the
15 defendant Young who came up with the idea of sending codes on a
16 second account, a second Threema account, correct?

17 A. Yes, I did.

18 Q. But it was you who came up with the idea of sending the
19 codes in the first place, correct?

20 A. We asked the defendant to send us Google Play codes, yes.

21 Q. And the defendant had not offered to send Google Play
22 codes at any point before that, correct?

23 A. Not to my knowledge.

24 Q. But the government in the alias Mo role had suggested that
25 Mr. Young send Google Play cards before that, correct?

Sikorski - Cross

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1 A. Before, before what?

2 Q. Before the -- so your message soliciting the Google Play
3 cards was dated July 18, 2016? That's Government Exhibit
4 2-106.

5 A. Yes. That's my first response to the defendant on the
6 Threema app.

7 Q. But prior to July 18, 2016, the alias Mo e-mail account
8 had suggested that Mr. Young send -- communicate through the
9 secure app through the use of Google Play gift cards, correct?

10 A. Correct. We had discussed how to purchase the app with
11 the, with the play card code.

12 Q. That was Government Exhibit 1-221, dated June 14, 2016?

13 A. I'd have to look.

14 MR. SMITH: Can you put Government Exhibit 1-221 back
15 up?

16 Q. This is an e-mail from the defendant's account to the
17 alias Mo's account dated June -- wait. Excuse me.

18 Government Exhibit 1-115. Government Exhibit 1-115
19 is a March 5, 2016, e-mail from the, from the government's
20 alias Mo account to the defendant's e-mail account. The second
21 paragraph, within the second paragraph, do you see the line
22 that reads, "We think that the kuffar had spy or hacked
23 there," and it's, I believe it says -- what does it say?
24 ". . . Telegram and some other apps. The brothers that I have
25 been helping with translations that were guiding people here

Sikorski - Cross

621

1 are starting to use an app," and it says "Threema," right? "We
2 were been trying to mess around with the Threema app and a few
3 of the brothers with technology backgrounds think its safer
4 than the other apps. These brothers are so smart to hear them
5 talk about this its amazing that Allah has brought them to us.
6 One problem is that it takes time to set up though since we
7 have to use gift cards to get the app."

8 This is an e-mail from the alias Mo account to the
9 defendant on March 5, 2016, correct?

10 A. Yes, it is.

11 Q. The defendant did not respond to this e-mail with a
12 suggestion that he could send those gift cards, did he?

13 A. No, he did not.

14 Q. Okay. So if we go back to the solicitation of the gift
15 card charge on July 18, 2016, that's Government Exhibit 2-106,
16 the defendant did not respond to this message by sending gift
17 cards; is that correct?

18 A. No, he did. He did send gift cards.

19 Q. I'm asking you about the message on July 18, Government
20 Exhibit 2-106. In response to this message, did the defendant
21 send gift cards?

22 A. Yes. I believe in response to the messages that I was
23 sending him on Threema, he sent gift cards.

24 Q. I'm referring to the July 18, 2016, message that's
25 Government Exhibit 2-106. On the screen, do you see that it

Sikorski - Cross

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1 reads -- this is your message, correct?

2 A. Yes.

3 Q. It says, "The group of brothers im' helping to get people
4 dawlah have 2 very trusted brothers in Uk who buy us Google
5 gift cards and send us the codes" back on accounts. "Theyve
6 been sending codes for a while . . ."

7 Next message says -- let's see here -- the response
8 to this text message on July 18 is Government Exhibit 2-109,
9 correct? We've got 2-109? Which begins, "Congratulations on
10 your child."

11 THE COURT: That's not there.

12 BY MR. SMITH:

13 Q. 2-110?

14 A. Yes, those messages are from the defendant to me on
15 July 21, 2016.

16 Q. July 21. Did the defendant send gift cards on July 21,
17 2016, to --

18 A. No, he did not.

19 Q. Okay. So, so the defendant did not respond to the first
20 solicitation request for Google Play gift cards on July 18,
21 2016, correct?

22 A. He did not respond with Google Play cards on July 21, no.

23 Q. And then you sent a second message, correct, on July 28,
24 2016? That's Government Exhibit 2-212?

25 A. Yes, I did.

Sikorski - Cross

623

1 Q. And in this message, Government Exhibit 2-212, it's the
2 July 28, 2016, message from the V4Vendetta account, "The
3 brothers in UK stopped getting codes to save for hijrah . . ."

4 Do you see that one?

5 A. I'm flipping through my paper here. Sorry.

6 Q. It's 2-112?

7 A. Yes. Yes. I now see in front of me Government Exhibit
8 2-112.

9 Q. This is a message on July 28, 2016, correct?

10 A. Yes, it is.

11 Q. And this is in response to defendant's message of July 21,
12 2016, correct?

13 A. Yes, it is.

14 Q. So in this message, you are asking Mr. Young this a second
15 time, to send gift cards, correct?

16 A. Yes, that's correct.

17 Q. But it's actually a third time, though, right?

18 A. The first time was the first time we just talked about on
19 the first messages that I sent, and this would be the second
20 time. I'm not sure where the third time comes in.

21 Q. Did you agree a few moments ago when we looked at
22 Government Exhibit 1-115 on March 5, 2016, that the V4Vendetta,
23 the Mo alias account had solicited gift cards from --

24 MR. GIBBS: I'd object to the form of the question.

25 THE COURT: I think that misstates that. I'll

Sikorski - Cross

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1 sustain the objection.

2 MR. GIBBS: Thank you.

3 THE COURT: Mentioning something and soliciting are
4 two different things. You need more specifics.

5 BY MR. SMITH:

6 Q. I think if we go back to Government Exhibit 1-115, which
7 is an e-mail dated March 5, 2016, do you agree, Agent Sikorski,
8 that this e-mail from yourself reads, "We think that the kuffar
9 had spy or hacked there telegram and some other apps. The
10 brothers that I have been helping with translations that were
11 guiding people here are starting to use an app called Threema.
12 We were been trying to mess around with the Threema app and a
13 few of the brothers with technology backgrounds think its safer
14 than the other apps. Only problem is that it takes time to set
15 up though since we have to use the gift cards to get the app."

16 Is that what it says?

17 A. That's what it says, yes.

18 Q. Did Mr. Young respond to this communication positively by
19 suggesting that you and the alias Mo should communicate through
20 the secure app?

21 A. No.

22 Q. He did not respond to that, that request until June 2016,
23 correct?

24 A. Yes, I believe that's correct, the next response.

25 Q. And in that response, Government Exhibit 1-221, he said,

Sikorski - Cross

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1 "I really don't trust any electronic or email communication...
2 don't feel comfortable even on this." Correct?

3 A. Yes. Without it directly in front of me -- it's in front
4 of me. That was a paraphrase, but yes.

5 Q. So finally, in Government Exhibit 2-112, that's July 28,
6 2016, and your message says, "Only need a few right now,"
7 meaning gift cards. Just send a few, right?

8 A. Yeah. I said we only need a few.

9 Q. You testified earlier today that you were in Washington,
10 D.C., when you received these messages on July 28, 2016,
11 correct?

12 A. I believe I said I didn't remember if I was because some
13 of the messages I was home when I received them in Alexandria,
14 Virginia, and some of the time I was in D.C. I don't
15 specifically remember when I actually received those messages.
16 I just don't remember, I'm sorry.

17 Q. And is that true for all of the Threema messages that
18 were, that were discussed in your direct testimony? Do you not
19 recall for any given message on Threema that you discussed in
20 your direct when you received -- whether you received it in
21 Alexandria or Washington, D.C.?

22 A. Some of them I can -- some of them I can specifically tell
23 because the pictures that I took of them, you can tell, like,
24 one of them is my kitchen, the background is my kitchen
25 counter. You can tell on some of them where I was based on

Sikorski - Redirect

626

1 what the background of the picture is.

2 Q. You don't remember for July 28?

3 A. So if I looked at it at home and then actually took the
4 picture at the office, I just don't recall.

5 Q. I'm just asking you today. Today, as you testify today,
6 you do not recall?

7 A. No, I don't recall if I was in D.C. or Virginia when I
8 actually received them.

9 Q. Do you know where the messages were sent, the Threema
10 messages were sent from the defendant's side?

11 A. No, I do not.

12 Q. They were sent in Southwest, D.C., in L'Enfant Plaza,
13 correct?

14 MR. GIBBS: Judge, the agent just testified he didn't
15 know.

16 THE COURT: That's testifying. Again, I would advise
17 the jury again, disregard that. There's no evidence of that
18 unless the witness says yes, that's where it happened.

19 MR. SMITH: That's all, Your Honor.

THE COURT: All right. Any redirect?

21 | REDIRECT EXAMINATION

22 BY MR. GIBBS:

23 Q. One thing I -- you were asked on cross, it made me realize
24 I needed to bring it out earlier, was the Best Buy receipts you
25 testified about earlier?

Sikorski - Redirect

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1 A. Yes.

2 Q. And the Best Buy video?

3 A. Yes.

4 Q. Where was that Best Buy located?

5 A. It was in Fairfax, Virginia.

6 MR. GIBBS: That's all I have, Judge. Thank you.

7 THE COURT: Is anybody going to call -- any recross?

8 That's one question.

9 MR. SMITH: (Shaking head.)

10 THE COURT: No? All right.

11 Is anybody going to call Agent Sikorski again?

12 MR. GIBBS: The government is not, Judge.

13 THE COURT: How about the defense? Is the defense
14 planning to call this witness again?

15 MR. SMITH: No, Your Honor.

16 THE COURT: All right. Then, Agent, you're excused
17 as a witness. You can stay in court and watch the proceedings
18 or leave, but do not discuss your testimony or anything you see
19 or hear in court with any witness who has not yet testified.

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: All right?

22 (Witness excused.)

23 THE COURT: All right, call your next witness.

24 MR. GIBBS: John Minichello.

25 THE COURT: All right. Agent Minichello, you're

Minichello - Direct

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1 still under your affirmation to tell the truth from yesterday,
2 and I hope your voice is stronger. All right?

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: All right.

5 SA JOHN MINICELLO, GOVERNMENT'S WITNESS,

6 PREVIOUSLY AFFIRMED, RECALLED

7 DIRECT EXAMINATION

8 BY MR. GIBBS:

9 Q. Good afternoon, Special Agent Minichello.

10 A. Good afternoon, sir.

11 Q. In August 2016, when the defendant was arrested, did you
12 come back to this area to participate in processing the
13 defendant?

14 A. Yes, I did.

15 Q. And do you know what the defendant looked like?

16 A. I do.

17 Q. Is he here in the courtroom?

18 A. He is.

19 Q. Could you point to him and identify what he's wearing?

20 A. He's there at the defense table. He's wearing a purple
21 tie -- blue.

22 THE COURT: Any objection?

23 MR. SMITH: No objection.

24 THE COURT: All right, he's identified.

25 BY MR. GIBBS:

Minichello - Direct

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1 Q. Now, you said you were involved in processing the
2 defendant. What was that role exactly?

3 A. After his arrest, we brought defendant Nicholas Young to
4 the FBI office, the Washington Field Office, and took down his
5 biographical information, took photographs of the defendant.

6 Q. And let's start with photographs of the defendant. I
7 believe you have a folder there in front of you and should have
8 Exhibit 4-300 in there.

9 MR. SMITH: One moment, Your Honor. We object to
10 relevance, 403.

11 THE COURT: All right, let me take a look.

12 Based on pretrial rulings that we've had, I'm going
13 to find that this can come in. It is relevant given the issues
14 in the case, so the objection is overruled.

15 MR. GIBBS: Thank you, Judge. And if we could move
16 4-300 into evidence and publish it to the jury?

17 THE COURT: It's in.

18 (Government's Exhibit No. 4-300 was received in
19 evidence.)

20 BY MR. GIBBS:

21 Q. Now, what is 4-300?

22 A. That's a tattoo we observed on Nicholas Young's left arm.

23 Q. And was the defendant interviewed that day?

24 A. He was, yes.

25 Q. And did you interview him?

Minichello - Direct

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1 A. I was one of two agents that interviewed him, yes.

2 Q. All right. And was the other agent who interviewed him
3 someone we will call Special Agent Jones?

4 A. He is, yes.

5 Q. And did the defendant sign an advice of rights form before
6 being interviewed?

7 A. Yes, he did.

8 Q. If you could take a look at Exhibit 5-302?

9 THE COURT: Is there any issue about the way in which
10 the statements were taken from the defendant?

11 MR. SMITH: (Shaking head.)

12 THE COURT: No?

13 MR. SMITH: No, Your Honor.

14 THE COURT: They were voluntary? You're satisfied
15 from *Miranda* warnings and all of that?

16 MR. SMITH: Your Honor, this issue has never come up
17 before.

18 THE COURT: Well, I know, so you get a chance to
19 raise it now. Is there any issue about the voluntariness of
20 any statements made by your client?

21 MR. SMITH: Would the Court allow us to speak with
22 our client before responding?

23 THE COURT: Do it promptly, yes.

24 (Discussion between Mr. Smith and the defendant off
25 the record.)

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1 MR. SMITH: Your Honor, we have no objection.

2 THE COURT: All right.

3 MR. GIBBS: So we'd move 5-302 into evidence.

4 THE COURT: 5-302?

5 MR. GIBBS: And if we could publish that?

6 THE COURT: Hold on a second.

7 You really don't need it. There's no issue.

8 MR. GIBBS: That's fine. We'll move on. I'm going
9 to save a little time.

10 Q. Special Agent Minichello, when you and Special Agent Jones
11 interviewed the defendant, was that interview videotaped?

12 A. Yes, it was.

13 Q. And prior to your testimony today, did you look at clips
14 from that interview and compare them with transcripts of those
15 clips for accuracy?

16 A. I did, yes.

17 Q. And did you initial the -- I think it's just one clip.
18 Did you initial that?

19 A. I initialed a disc with those clips on it, yes.

20 MR. GIBBS: All right. If I could hand this up to
21 the defendant, have him authenticate it?

22 THE COURT: You're handing it to the witness.

23 MR. GIBBS: Yes, thank you.

24 Q. And do you recognize that?

25 A. I do. And I recognize my initials on that disc.

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1 MR. GIBBS: All right. Judge, at this time, what I'd
2 like to do is move in the disc which is 5-301, I believe it's
3 all three numbers: 5-301-1, -2, and -3. All three clips are
4 contained on the one disc. I'd like to move that into
5 evidence.

6 And this is the interview I was telling the Court
7 about that was actually videotaped. So we have paper
8 transcripts. These are short clips, but I'd like to pass those
9 out as well.

10 THE COURT: All right, I think this is a good time
11 actually to take the afternoon break because you have to hand
12 out papers.

13 MR. GIBBS: Sure.

14 THE COURT: We can get -- we'll have the transcripts
15 on the chairs for the jurors when they come back in. We'll be
16 in recess until four o'clock.

17 (Recess from 3:44 p.m., until 4:00 p.m.)

18 (Defendant present, Jury out.)

19 THE COURT: All right, I understand there's one or
20 two matters defense wants the Court to consider?

21 MR. SMITH: Your Honor, I think we understand from
22 the government that the next witness, Agent Minichello, will be
23 testifying about his interview with the defendant on August 3,
24 2016. This isn't charged conduct. This is just a conversation
25 that the defendant had on the day of his arrest. It doesn't --

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1 THE COURT: All right, let me find out, what's the
2 relevance of anything that's going to be said?

3 MR. GIBBS: Judge, because it's charged conduct. In
4 Count 1, he's charged from December to August 3, 2016, for
5 making a false statement about the destination and purpose of
6 Mo's trip and why he went over there. They asked him about Mo
7 in the August 3 interview, and he lied about -- in answering
8 questions about Mo. So it is part of Count 1.

9 THE COURT: It's relevant.

10 MR. GIBBS: Thank you.

11 THE COURT: Overruled.

12 I thought there was another issue.

13 MS. MORENO: Thank you, Your Honor.

14 THE COURT: All right.

15 MS. MORENO: I'm not sure exactly which witness is
16 going -- the government is going to try to get a number of
17 items in. These are all these Hitler, smokestack --

18 THE COURT: All right.

19 MS. MORENO: -- Jewish cartoon stuff, and I'm not
20 sure who's going to do it. I've asked.

21 We have stipulated to the places that it was found,
22 but we have not stipulated to relevance or the 403 issue, which
23 is very important to us. So I certainly don't want any of
24 these published, and I don't want the government to tell the
25 jury that the defense has stipulated to it, and I'd like the

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1 Court to look at each and every one of those -- that category
2 of items in -- that we feel are very prejudicial.

3 THE COURT: I had previously told the government that
4 I wanted to take a look at what you were planning to introduce,
5 this type of evidence, to make sure that it was not cumulative
6 and that it was reasonable, all right? And you still haven't
7 given it to the Court. We're not just wholesale allowing, you
8 know, 25 or 30 exhibits.

9 You'll get, you know, I'm allowing you to go into
10 this somewhat because again, the predisposition issue is an
11 element the government's got to meet, all right? And you've
12 made a strong argument that your client did not have any
13 disposition to get involved in this kind of activity until the
14 government got involved with him. We've talked about this
15 before. And I have made the decision based upon what has been
16 presented to me pretrial that there is enough evidence of some
17 connection between being part of a white supremacist,
18 anti-Semitic, or having those sympathies, and going into the
19 more radical form of, you know, militant Islam, and so it's
20 part of this case.

21 That's because of the way the case is being
22 litigated, but I'm not going to allow the government, I hope,
23 to overstep the bounds on the 403.

24 I did, if you recall in the initial voir dire to the
25 jury, tell them that's not what your client is being charged

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1 for, and I will repeat a similar type of instruction to the
2 jury and explain to them the reason why this was permitted in,
3 it is relevance to the issue of predisposition.

4 MS. MORENO: Your Honor, I, I don't want to frustrate
5 the Court's protocol at all or be disrespectful, but I believe
6 that each and every item that they're talking about we either
7 need to go to the bench or the Court needs to take a look at it
8 beforehand, because there are 30 or 40 of these exhibits
9 that -- cartoons, it's just -- it's beyond the pale.

10 And while the defense respectfully does not agree
11 with the Court's interpretation of predisposition and the
12 connection between militant Islam and white supremacy, we honor
13 the Court's decision, but still there's got to be a 403
14 gatekeeping aspect to this.

15 THE COURT: Which witness is going to be testifying
16 to this?

17 MR. KROMBERG: Your Honor, most of these items the
18 defense has stipulated to the authenticity of.

19 THE COURT: That's not the issue.

20 MR. KROMBERG: I understand. So as a result -- and
21 that they were, they were seized at a particular place in
22 Mr. Young's home or from his computer media. So we do not
23 think we needed to have a witness testify as to yes, these were
24 seized from Mr. Young's house.

25 That we -- for example, *Inspire* magazines put out by

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1 al Qaeda, they were seized from the house, and the defense has
2 stipulated they were on the computer media. I don't think that
3 we need a witness to say this was seized from the defendant's
4 house on his computer media.

5 We could -- now, it is true that I would ask
6 Mr. Daveed Gartenstein-Ross to talk about those items, but I
7 think that they can be admitted even before he gets here so we
8 don't have to go through the, okay, we move to admit -- "Do you
9 recognize this? What is it?"

10 "It's an *Inspire* magazine. There is an Usama Bin
11 Laden speech. There is" --

12 THE COURT: Now, wait, wait. That is directly
13 related to the issues in this case. That's not going to be the
14 problem.

15 MR. KROMBERG: Right.

16 THE COURT: The problem is the Nazi and white
17 supremacist exhibits.

18 MR. KROMBERG: Right.

19 THE COURT: How many of those are you planning to
20 introduce?

21 MR. KROMBERG: There are approximately six
22 photographs of Mr. Young, and I may be off, it may be seven,
23 but six or so. There is a framed portrait of Hitler. There is
24 a poster of Hitler.

25 There is the series of photographs that Your Honor --

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1 not photographs -- well, photographs that Your Honor has seen
2 involving the Mufti of Jerusalem during World War II and the
3 graphic of the Worldwide Association of Islamists and Nazis.
4 There's a picture of Otto Skorzeny, who is on the defendant's
5 prayer list along with Hitler, and Dr. Gartenstein-Ross is
6 going to speak about Skorzeny.

7 There are -- excuse me just a moment. Let me take a
8 look.

9 MR. SMITH: Your Honor, if I may just --

10 THE COURT: No, this is not your issue.

11 MR. KROMBERG: Your Honor, to the extent that Your
12 Honor wants to follow along, these are the series of exhibits
13 in No. 10, which are the things that were seized during the
14 2016 search.

15 THE COURT: Look, actually what I don't want to do is
16 hold up a very conscientious jury. Let's finish with this
17 witness because he's not related to this issue.

18 MR. KROMBERG: And what I -- I actually do not
19 disagree with what Ms. Moreno said. It may be appropriate
20 after this witness and the next witness also is talking about a
21 seized item that apparently we don't have a stipulation to, but
22 after that, then it's just predisposition witnesses.

23 THE COURT: All right.

24 MR. KROMBERG: And it may be appropriate to let the
25 jury go at that point and then talk about individual exhibits.

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1 THE COURT: Let's get, let's get the jury in.

2 MR. SMITH: Your Honor, there's one critical point we
3 have to discuss. Mr. Gibbs just made a representation to the
4 Court about the relevance of the next witness, and it's
5 factually inaccurate.

6 THE COURT: He has this witness on the stand. I want
7 to get this witness --

8 MR. SMITH: Your Honor, this is -- I just need to
9 make an offer of proof. It's absolutely essential, Your Honor.
10 This is essential.

11 Mr. Gibbs just represented that this next witness
12 would testify on Mr. Young's statements in the August 3, 2016,
13 interview, the arrest day. Mr. Gibbs represented that this is
14 charged conduct.

15 If Your Honor just reviews the indictment, you'll see
16 that August 3, 2016, is not a date included in any of the
17 charges. So this is not charged conduct, Your Honor.

18 MR. GIBBS: Judge, I believe -- well, I don't --

19 MR. SMITH: We have the indictment right here.

20 THE COURT: I have the indictment.

21 MR. SMITH: If Your Honor looks at Count 1, in
22 paragraph 3, it says, "between December 3, 2015, and August 2."

23 MR. GIBBS: It says, "on or about August 2."

24 THE COURT: And this is August 3?

25 MR. GIBBS: Correct, Judge.

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1 THE COURT: Overruled. Let's go.

2 (Jury present.)

3 THE COURT: All right, everybody set?

4 All right, Mr. Gibbs?

5 MR. GIBBS: Thank you.

6 Q. Special Agent Minichello, you testified a moment ago that
7 you were one of the two FBI agents who participated in the
8 interview of the defendant after he was arrested in August of
9 2016, correct?

10 A. That is correct, yes.

11 Q. All right. And if we could play the first clip of the
12 videotape -- well, and the interview was videotaped?

13 A. Yes, it was.

14 Q. All right. If we could play that first clip? And I
15 believe we have transcripts for that.

16 THE COURT: All right. So 5-301-1, that's what this
17 is?

18 MR. GIBBS: It's 5-301-1, correct, Judge.

19 THE COURT: All right. And then 2 and 3 are also in.
20 They're all in.

21 (Government's Exhibit Nos. 5-301-1 thru 5-301-3 were
22 received in evidence.)

23 (Government's Exhibit No. 5-301-1 was played.)

24 BY MR. GIBBS:

25 Q. All right. Now, in that first clip, Special Agent

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1 Minichello, when you asked about the person in this picture
2 right here, whose picture did you show the defendant?

3 A. It was a picture of Mo, the confidential human source we
4 talked about in my earlier testimony.

5 Q. And when the defendant said at the end of that clip that
6 you-all are going to check phone records, was he right about
7 that? Did the FBI, in fact, get his phone records?

8 A. We did.

9 Q. And was that the pen/trap order that allowed you to obtain
10 his Verizon records that we -- you testified about yesterday in
11 Exhibit 6-202?

12 A. Correct. That order as well as others from previous
13 intercepts of his telephone, yes.

14 MR. GIBBS: All right. And I'm not going to bring
15 that up, but if we can go to the second clip, which is 5-301-2?

16 (Government's Exhibit No. 5-301-2 was played.)

17 BY MR. GIBBS:

18 Q. Now, Special Agent Minichello, at the end of that clip,
19 when the defendant said he never hung out at Mo's house and Mo
20 never hung out at his, was he accurate about that?

21 A. To the best of my knowledge, yes.

22 MR. GIBBS: And finally, if we could display Exhibit
23 5-301-3?

24 (Government's Exhibit No. 5-301-3 was played.)

25 MR. GIBBS: All right. And finally, Special Agent

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1 Minichello -- can we pull up Exhibit 6-201 and go to the second
2 page?

3 THE COURT: Is that already in?

4 MR. GIBBS: It is already in, Judge.

5 THE COURT: All right.

6 MR. GIBBS: Can you blow up the message on the second
7 page?

8 Q. All right, Special Agent Minichello, at the end of the
9 clip that we just played, the defendant said at the end, "I
10 thought he would be back, but he didn't come back."

11 Do you recall that?

12 A. I do, yes.

13 Q. And in an earlier clip, he talked about how you-all,
14 meaning the FBI, are going to check phone records. Do you
15 recall that?

16 A. I do, yes.

17 Q. All right. Now, the exhibit on the screen now, this is an
18 exhibit you testified about yesterday. This is a text message
19 from the defendant's phone to Mo's phone in November of 2014.
20 Do you recall that?

21 A. I do, yes.

22 Q. Okay. And how does the message that he sent to Mo's phone
23 back in November of 2014 compare with what he told you and
24 Special Agent Jones about how you were going to check phone
25 records and he thought he would be back?

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1 A. The two correlate in the sense that we did send -- we did
2 intercept a message from the defendant to Mo, and it was
3 retained in the telephone records.

4 MR. GIBBS: Okay. Thank you. That's all I have,
5 Judge.

6 THE COURT: All right. Mr. Smith, any cross?

7 MR. SMITH: Yes.

8 CROSS-EXAMINATION

9 BY MR. SMITH:

10 Q. Good afternoon, Agent Minichello

11 A. Good afternoon, sir.

12 Q. This interview was conducted on August 3, 2016, in the
13 clip we just viewed, correct?

14 A. As I recall, yes, sir.

15 Q. This was after Mr. Young was arrested?

16 A. That's correct.

17 Q. Okay. At all times during this interview, there was no
18 FBI investigation into the informant, Mo, correct? At the time
19 of this interview, there was no FBI investigation into your own
20 informant, Mo, correct?

21 A. Mo was not a target in the FBI investigation at that
22 time, no.

23 Q. Has he ever been the target of an FBI investigation?

24 A. Not by me nor to my knowledge.

25 Q. Not to your knowledge.

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1 There's never been at any point a grand jury
2 investigation into this informant, Mo, has there?

3 A. I'm unaware of one.

4 Q. You asked Nicholas Young in the interview: Where did Mo
5 go, right? You said: Do you have any knowledge of where he
6 went? I'm paraphrasing now.

7 A. Let me find the clip here real click. Which line are you
8 referring to of the transcript?

9 Q. I'm sorry, I'm paraphrasing.

10 A. Okay.

11 Q. You said something to the effect of do you know where Mo
12 went? Do you know why he's no longer in the Northern Virginia
13 area?

14 A. I don't think we exactly said that, but --

15 Q. Well --

16 A. I'm not trying to parse words. I just want --

17 Q. Do you recall inquiring of the defendant on August 3,
18 2016, where -- whether he knew where Mo went?

19 A. Generally, yes. Absolutely.

20 Q. Yes. And what was Mr. Young's response, do you recall?

21 A. I believe he said, "I don't know," but it's recorded here.

22 Q. Or couldn't say? He said, "I couldn't say"?

23 Was that false?

24 A. Yes.

25 Q. Why?

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1 A. Why was it false?

2 Q. Yeah.

3 A. I think based on the defendant's knowledge and previous
4 conversations with Mo, he had a very good idea of where he was
5 and that he was able to say that. So saying that he couldn't
6 say that wasn't accurate.

7 Q. Did the informant actually travel to Syria?

8 A. No.

9 Q. So if Mr. Young had said the informant had actually
10 traveled to Syria, that would be false, correct?

11 A. No.

12 Q. Why?

13 A. Mr. Young could easily have said the informant --

14 Q. I'm not asking you what Mr. Young could have said. I'm
15 asking you whether it would have been false.

16 MR. GIBBS: Objection, Judge. The witness should be
17 allowed to answer the question.

18 THE COURT: No, overruled.

19 BY MR. SMITH:

20 Q. I'm asking you whether it would have been false if
21 Mr. Young had said he had gone to Syria.

22 A. It would have been inaccurate, but it would not have been
23 out of line with --

24 Q. It would have been inaccurate, correct?

25 THE COURT: Wait.

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1 THE WITNESS: It would have been inaccurate at the
2 time, but to what the defendant would have suspected or
3 believed based on his foreknowledge where Mo was, he wouldn't
4 have been telling the truth at that point if he said he went to
5 Syria.

6 BY MR. SMITH:

7 Q. So I'm not asking about what Nick knew. I'm asking
8 whether it would have been as a matter of fact objectively true
9 or false for Mr. Young to say Mo had traveled to Syria.

10 MR. GIBBS: Judge, I'd object on relevance grounds at
11 this point.

12 THE COURT: Overruled.

13 BY MR. SMITH:

14 Q. Would -- if Mr. Young had told you Mo had gone to Syria,
15 he told you that in the interview on the arrest day of
16 August 3, 2016, would that have been true or false?

17 A. It would have been factually inaccurate; that is correct.

18 Q. Thanks. At all times during the interview on August 3,
19 2016, you knew where Mo had allegedly gone, right?

20 A. Yes.

21 Q. So you knew the answer to your own question you asked
22 Mr. Young on August 3, 2016, before you asked it, correct?

23 A. Which question in particular, if you could read?

24 Q. Did you know where Mo went in October of 2014? We just
25 discussed how you said --

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1 A. Yes, absolutely.

2 Q. So before you asked the question, you knew the answer,
3 right?

4 A. Yes.

5 Q. I think you also asked a question about whether you had --
6 how many communications have you had with Mr. -- with the
7 informant, Mo, since he left in October of 2014? You asked
8 Nicholas that on August 3, 2016, correct?

9 A. To the best of my knowledge, yes. I believe we had a good
10 grasp of those communications.

11 Q. You already knew the answer to exactly how many
12 communications he had had, correct?

13 A. That's what I said.

14 Q. You also asked him how many times had he met the
15 informant, Mo, right, on August 3, 2016?

16 A. Something to that effect. Would you like me to read the
17 exact line or --

18 Q. No.

19 A. Okay.

20 Q. You already knew the answer, right?

21 A. Yes.

22 Q. Did you ask Mr. Young in this interview any questions that
23 you did not already have the answers to?

24 A. I can look back. I can't recall. Would you like me to
25 review?

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1 Q. Okay. Concerning Mo.

2 A. Yes. There are questions in there that relate to the
3 defendant's intentions, which I couldn't say though I could
4 speculate to.

5 Q. I didn't ask you whether any of your questions concerning
6 Mo are questions for which you were seeking factual information
7 that could have corrected your understanding of what Mo had
8 done or said.

9 A. Okay. So could you restate your question?

10 Q. I'm asking you whether there were any questions you asked
11 the defendant, Nicholas Young, on August 3, 2016, that would
12 have corrected your understanding of what the informant, Mo,
13 had done or said in the past.

14 A. No.

15 MR. SMITH: Thanks. That's all I have.

16 THE COURT: Any redirect?

17 MR. GIBBS: No, Judge. Thank you.

18 Thank you, sir.

19 THE COURT: I'm assuming this agent now can step
20 down? There's no one who's going to call him for a third time?

21 MR. GIBBS: We have no intention of calling him for a
22 third time, Judge, thank you.

23 THE COURT: How about the defense? Do you plan to
24 call this witness again?

25 MR. SMITH: No, not now, Your Honor.

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1 THE COURT: Well --

2 MR. SMITH: We have no intention of calling this
3 witness again.

4 THE COURT: All right. Then, Agent, you may step
5 down. You're now excused as a witness. You can stay in court
6 and watch the proceedings or leave, but do not discuss your
7 testimony or anything you hear in court with any witness who
8 has not yet testified. Thank you.

9 THE WITNESS: Thank you, Your Honor.

10 (Witness excused.)

11 THE COURT: All right, your next witness?

12 MR. TURGEON: The government calls Paul Lee to the
13 stand.

14 THE COURT: Yeah, I'll ask the jury to turn in the
15 transcripts, please, so that you're not bothered by them.

16 PAUL LEE, GOVERNMENT'S WITNESS, AFFIRMED

17 DIRECT EXAMINATION

18 BY MR. TURGEON:

19 Q. Could you please state your name and spell it for the
20 record.

21 A. Yeah. My name is Paul Lee. It's spelled P-a-u-l L-e-e.

22 Q. How are you employed?

23 A. I am a computer forensic examiner for the FBI.

24 Q. How long have you been a computer forensic examiner?

25 A. I've been doing computer forensic examining for over 12

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1 years. I've been employed with the FBI for 18 years.

2 Q. Sir, could you please tell the jury what a computer
3 forensic examiner does?

4 A. Basically, we recover data from evidence, digital
5 evidence, to include computer hard drives, servers, magnetic
6 medias, optical medias like CDs, electronic medias like thumb
7 drives, and also electronic devices like cell phones and
8 tablets.

9 Q. What experience do you have in computer forensic
10 examinations?

11 A. I've conducted basically data recovery for digital
12 evidence in, both in the Windows forensics, in Linux forensics,
13 in mobile devices.

14 Q. Approximately how many computer forensic examinations have
15 you conducted in your career?

16 A. I've done over, well over 600, and involving 1,500
17 devices, pieces of evidence.

18 Q. And what sort of training do you have in computer forensic
19 examinations?

20 A. I have --

21 THE COURT: Is there any, any debate about the
22 qualification of this witness?

23 MR. SMITH: No, Your Honor.

24 MS. MORENO: No, Your Honor.

25 THE COURT: Are you having him designated as an

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1 expert?

2 MR. TURGEON: Yes, Your Honor. The government moves
3 to certify the witness as an expert in computer forensic
4 examinations.

5 MS. MORENO: No objection.

6 THE COURT: All right, he's so qualified. Let's move
7 this along.

8 BY MR. TURGEON:

9 Q. Mr. Lee, what is the role of a search warrant in the
10 computer forensic process?

11 A. Basically, a search warrant for -- from a computer
12 forensic standpoint, it allows me to give me the legal
13 authority to proceed with the examination.

14 Q. And when in the process do you review the search warrant?

15 A. I review it just before I conduct any examination, and I
16 have to confirm the search warrant.

17 Q. Okay. Let's talk about hard drives. What's the first
18 step in conducting a computer forensic examination of a hard
19 drive?

20 A. The key element is to preserve the evidence. You do that
21 by obtaining an image of the hard drive, and then you work off
22 the image.

23 Q. Could you please explain how that image is obtained?

24 A. Basically, you, you can take the hard drive, remove it
25 from the computer. You connect it to a computer, and you use a

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1 software that is tested and approved by FBI Headquarters, and
2 that software basically does a bit-by-bit copy of the content
3 of the hard drive, of the evidence, and creates it in a file,
4 which we call an image, a forensic image.

5 Q. What role does write-block play in preserving that
6 evidence?

7 A. Write-block prevents data from writing into the original
8 evidence, but it allows the software or the hardware to see the
9 data within the evidence. So it's a one-way data flow.

10 Q. And then after you've made a copy, how do you determine --
11 after you've made an image, rather, how do you determine
12 whether that image is the same as the original?

13 A. We use a -- by way of using a hash, it's called the MD5
14 hash, and what happens is that when we conduct the image of a
15 hard drive, we calculate the hash as we create the hard drive.
16 So the hash represents the original data, and then we calculate
17 it again on the copy image, and they should compare the same.
18 They pretty much represent like a fingerprint.

19 Q. And so what happens to that MD5 hash value if there's one
20 change made to the imaged copy, like one period or one dot
21 added or subtracted?

22 A. That hash would be dramatically different.

23 Q. Sir, after you make an image of a seized hard drive, what
24 do you do with the original hard drive?

25 A. The original hard drive is reassembled at a computer and

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1 returned to Evidence Control, and I document it in the chain of
2 custody.

3 Q. And then how do you proceed with the examination of the
4 image that you made?

5 A. Basically, I take the image and run it against an approved
6 tool that we have to recover the data and sort it to a point
7 where I can present it to the investigator for review.

8 Q. And after that recovery and analysis, what steps are taken
9 in the post-examination verification process?

10 A. I take that image that I did the processing on, the data
11 recovery, and I run that hash again on that image, and it
12 should compare to the original.

13 Q. And after that verification, what do you do with any files
14 or other evidence that you found?

15 A. The files and the data that are recovered from, from the
16 analysis is posted for the case agents and the investigators
17 for review.

18 Q. And were the steps you just described followed in this
19 case?

20 A. Yes, sir.

21 Q. So let me ask you about cell phones now. What processes
22 are available for conducting a computer forensic examination of
23 a cell phone?

24 A. A cell phone is a little different than computer hard
25 drive in the sense that cell phone, you're conducting the, not

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1 just the memory chip but also the device, and typically, it is
2 conducted live.

3 Q. Are there any other types of examinations that you can
4 conduct?

5 A. Yeah. There's, there's essentially two categories. You
6 can do a logical extraction or a physical extraction, and
7 there's something in between as well but --

8 Q. And how do you determine whether to conduct a logical or a
9 physical extraction?

10 A. That is purely dependent on the make and model of the
11 phone; the condition of the phone, for example, if the phone
12 was soaked in water, it can drive how you have to extract that
13 data; and also dependent on the software version and also the
14 security that's applied to that phone, whether it's PIN lock or
15 gesture lock or so forth.

16 Q. So could you please describe the process for conducting a
17 logical extraction, briefly?

18 A. Yeah. Basically, in a logical extraction, it's like
19 taking data from a live device because unlike a computer and a
20 hard drive, where a hard drive is just four screws and a couple
21 of connectors, you can pull it out, in a phone, the memory chip
22 is soldered into the circuit board, and you're not going to be
23 able to pull that, so you're going to have to conduct that exam
24 with the phone on and operating, and that would be typical of
25 logical examinations, and sometimes you do that with a physical

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1 examination as well, with that technique, using certain tools.

2 Q. So other than what you just mentioned, could you please
3 describe the process for conducting a physical examination of a
4 cell phone?

5 A. Okay. A physical examination, again, it could be done
6 live and also could be done as, basically turned off, where the
7 phone is not operating, but you're still live because you're
8 adding power to the phone, and you're extracting the data
9 directly from the circuit board.

10 Q. So after you extract data from a cell phone using either
11 method, what is done with the original phone?

12 A. The original phone is returned to evidence control. If --
13 unless there's additional analysis that needs -- that's
14 required after a physical extraction.

15 Q. How do you examine any data that you've extracted through
16 either means?

17 A. The data extracted is processed and sorted just like
18 similar to an image, and it's presented to a form where it can
19 be easily reviewed by the investigators.

20 Q. And then what do you do with any files or evidence that
21 you, that you found?

22 A. I post that -- I archive that on a read-only DVD or CD or
23 optimal media, and I present that to the case squad, and I put
24 a similar copy up at the server so they can see it -- so
25 multiple people can see it at the same time.

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1 Q. And were those steps followed with regard to the cell
2 phone extractions you did in this case?

3 A. Yes, sir.

4 Q. When did you first become involved in this case?

5 A. If I can look at my notes here?

6 I was assigned to this case on August 17, 2016.

7 Q. What was your first assignment?

8 A. My first assignment was to analyze four items, one being a
9 Toshiba laptop, one being a ZTE phone, and another item being a
10 Verizon flip phone, and then one more item, which is the Amazon
11 tablet.

12 Q. Okay. With the help of the court security officer, I'm
13 going to show you what's been marked as Government Exhibit
14 3-200. I believe it's a physical phone already in evidence, I
15 believe.

16 MR. SMITH: No objection.

17 THE COURT: All right, it's in.

18 BY MR. TURGEON:

19 Q. What is that, Mr. Lee?

20 A. That is the ZTE phone that I analyzed.

21 Q. So you've seen it before?

22 A. It's a smartphone, yeah.

23 Q. How can you identify it as such?

24 A. The unique -- I notice in my photograph I have here in my
25 notes the uniqueness of the tape, the translucent tape that was

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1 on there as found when I pulled it out of evidence.

2 Q. And where on the phone is that tape?

3 A. That is right over the camera, on the front, front camera.

4 Q. Is that exhibit in substantially the same condition today
5 as when you finished conducting your examination of it?

6 A. Yes.

7 MR. TURGEON: Your Honor, at this time, the
8 government would like to read Stipulation No. 42 into evidence.

9 THE COURT: All right.

10 MR. TURGEON: It states: The United States and the
11 defendant hereby stipulate and agree that Government Exhibit
12 3-200 is the cellular telephone depicted in Government Exhibit
13 3-103.

14 And can we pull up 3-103, please?

15 THE COURT: Well, we've seen that already. It's
16 already in evidence.

17 MR. TURGEON: That is in evidence, Your Honor, yes.

18 THE COURT: All right.

19 BY MR. TURGEON:

20 Q. Mr. Lee, before beginning your examination of the phone,
21 did you review any search warrants?

22 A. Yes, I did.

23 Q. And based on that review, what, if anything, did you
24 determine?

25 A. The search warrant allowed me the legal authority to

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1 proceed with my examination.

2 Q. Mr. Lee, with regard to the tape on the camera that you
3 mentioned, was that tape already on the camera, or did you put
4 any additional or other tape on there?

5 A. No, I did not put tape on it. I typically do, but that
6 tape was already in place.

7 Q. Okay. Mr. Lee, what is an international mobile equipment
8 identity, IMEI number?

9 A. The IMEI is an equipment, it's a hardware identifier that
10 basically -- it's a number that, that allows you to use the
11 network. It's what the network uses to identify your equipment
12 in the tower, so if you're with AT&T, and they would look for
13 that IMEI and say, yeah, that is your equipment.

14 Q. And is that a number that's unique to a phone?

15 A. That's absolutely yes.

16 Q. Were you able to determine the IMEI number of this phone?

17 A. Yes, I did.

18 Q. How did you do that?

19 A. That was etched in the back of the -- if you open the back
20 on the battery, that's etched right there on the label.

21 Q. And what was that IMEI number?

22 A. That's a 15-digit number. I'll have to look at my -- that
23 IMEI number is 869578020680874.

24 Q. Mr. Lee, you're looking at notes right now?

25 A. Yes.

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1 Q. Are those notes that you made when that information was
2 fresh in your mind?

3 A. Yes.

4 Q. From the examination?

5 A. Yeah. There's actually photographs, too, of the photos I
6 took.

7 Q. I'm going to ask with the help of the court security
8 officer to show you what's been marked as Government Exhibit
9 4-109, which is, I believe, already in evidence, and that's
10 cell phone packaging found in the defendant's backpack.

11 THE COURT: It's already in.

12 MR. TURGEON: Excuse me, Your Honor?

13 THE COURT: That exhibit is in.

14 MR. TURGEON: Yes. I'd like to have it presented to
15 the witness so he can testify about it.

16 THE COURT: All right.

17 MR. TURGEON: 4-109, please.

18 Q. Mr. Lee, is there an IMEI number listed on that packaging?

19 A. Yes, it is.

20 Q. And how does that number on the packaging compare to the
21 IMEI number that you found etched into the battery chamber of
22 that phone?

23 A. That number is identical.

24 Q. Okay. Mr. Lee, what is the SIM card?

25 A. A SIM card is a subscriber identity module, SIM, and what

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1 that is, it's a small plastic card that is inserted into the
2 phone, and that card is provided by your service provider,
3 like, say, Verizon or AT&T, and in that card contains the
4 necessary subscriber numbers to handshake with the network when
5 you use that service.

6 If you use a phone without the SIM card, you don't --
7 you're not going to be able to make calls or receive texts.

8 Q. And by what sort of serial number, if any, is the SIM card
9 identifiable?

10 A. The SIM card is identified with a, with a number they call
11 ICCID. It stands for integrated circuit card identifier.

12 Q. And is that a number that's unique to a SIM card?

13 A. That's correct.

14 Q. And did Government Exhibit 3-200 have a SIM card?

15 A. The phone, yes, it did.

16 Q. And were you able to determine that SIM card ICCID number?

17 A. Yes.

18 Q. How did you do that?

19 A. It's two ways. First of all, it's printed on the outside
20 of the card, so -- in clear view, and then also when you do the
21 extraction of the data, that data also shows the identical
22 number. I usually match them both, make sure that there was
23 not a mistake in printing.

24 Q. And did you match them both in this case?

25 A. Yeah -- yes.

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1 Q. What was the ICCID number?

2 A. The ICCID number for that card is a 20-digit number.

3 Sometime they're 21, sometime they're 20. This is

4 89014103278807244994.

5 Q. Could you please look at the cell phone packaging again,

6 Government Exhibit 4-109?

7 A. Okay.

8 Q. And how does the ICC- -- excuse me, do you see an ICCID
9 number on that packaging?

10 A. Yes, I do.

11 Q. And how does that ICCID number compare to the SIM card
12 that you were just testifying about from the cell phone?

13 A. This number is the same.

14 Q. Okay. What analysis, if any, did you perform on the SIM
15 card?

16 A. I do a logical extraction of the data to reveal the
17 numbers that are stored in that SIM card.

18 Q. Were you able to determine that phone's telephone number?

19 A. Yes. That's stored in the SIM card as well.

20 Q. What was that telephone number?

21 A. That telephone number is 703-338-2313.

22 Q. What type of analysis -- or extraction, rather, did you
23 conduct on that cell phone's handset?

24 A. Initially, I tried to turn it on to see the condition, and
25 it was pattern locked, so not knowing the pattern, I wasn't

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1 going to be able to get into it. The tools that I use weren't
2 able to bypass that law.

3 So what I had to do was basically, and I'm certified
4 to do so, it's using advanced extraction, which is
5 disassembling the phone, installing the wires to the circuit
6 board, and communicate directly to the memory and download the
7 entire memory. And it's 8-gigabyte size, or roughly 8
8 gigabytes.

9 THE COURT: Eight gigabytes?

10 THE WITNESS: Eight gigabytes. Yeah, that phone is
11 8-gigabyte, but when you download the memory, it's slightly
12 smaller than that.

13 MR. TURGEON: Your Honor, for the jury's reference,
14 I'd like to publish Exhibit 4-109, which is the cell phone
15 packaging.

16 THE COURT: Any objection?

17 MR. SMITH: No objection.

18 THE COURT: All right, it's in.

19 BY MR. TURGEON:

20 Q. Mr. Lee, is this the packaging you were just discussing?

21 A. Yes. Yes, sir.

22 Q. So what were the results of the process you just
23 described?

24 A. Basically, I was able to acquire a, a copy of the memory
25 data from the cell phone without having to remove the chip and

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1 all, just basically just tapped into the circuit board and read
2 it, and then I was able to process that, that data.

3 Q. And processing that data, what sort of information did you
4 recover?

5 A. Media files, e-mails, and call logs, contacts, those kind
6 of things, and also apps that were, that were installed as a
7 third party.

8 Q. Were you able to determine that phone's Google account
9 number?

10 A. Yes.

11 Q. Excuse me, Google account name?

12 A. Yes, name and e-mail.

13 Q. What Google account was registered to the phone?

14 A. That Google account was in argelta1777@gmail.com. I think
15 it's -- I think it's pronounced "argelta1777," I guess.

16 Q. And what apps, if any, did you determine were installed on
17 that phone?

18 A. There were not many third-party apps. There was one that
19 was prominent. It was Threema.

20 MR. TURGEON: Okay. I have here a signed stipulation
21 which is labeled Government Exhibit 12-34 which I'd like to
22 move into evidence and read to the jury.

23 THE COURT: Go ahead.

24 (Government's Exhibit No. 12-34 was received in
25 evidence.)

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1 MR. TURGEON: The United States and the defendant
2 hereby stipulate and agree that Government Exhibits 1-700
3 through 1-702 are authentic business records of Google, Inc.

4 THE COURT: All right. You're moving those exhibits
5 in now, 700, 701, and 702?

6 MR. TURGEON: Just 701 and 702, Your Honor.

7 THE COURT: All right, 1-701 and 702 are in. Any
8 objection?

9 MR. SMITH: No objection.

10 MS. MORENO: No objection.

11 THE COURT: All right.

12 (Government's Exhibit Nos. 1-701 and 1-702 were
13 received in evidence.)

14 MR. TURGEON: At this time, Your Honor, I'd like to
15 publish Government Exhibit 4-102.

16 THE COURT: That's already in, I believe.

17 MR. TURGEON: That's already in evidence, Your Honor.

18 THE COURT: All right, go ahead.

19 MR. TURGEON: That's a scrap of paper seized from the
20 defendant's truck.

21 THE COURT: Yes.

22 MR. TURGEON: Actually, Your Honor, there's a
23 correction. That was seized from the defendant's person at the
24 time of his arrest.

25 Q. Mr. Lee, could you look at that exhibit, 4-102, on the

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1 screen?

2 A. Yes.

3 Q. Do you see on that screen anything that, that resembles
4 the Google account associated with that cell phone?

5 A. Yeah. It's the, it's the argelta1777@. That's the part
6 that I, that I see there.

7 MR. TURGEON: Okay. I'd like to publish to the jury
8 and show to Mr. Lee Government Exhibit 1-701.

9 THE COURT: All right.

10 BY MR. TURGEON:

11 Q. Mr. Lee, what is this? I believe it's on your screen,
12 Government Exhibit 1-701.

13 A. This appears to be a Google return on a, maybe a
14 subpoenaed data of the Google account information that was
15 returned to the government, a typical return that I've come
16 across.

17 THE COURT: I'm sorry, you were trailing off,
18 Mr. Lee. You have to speak up.

19 THE WITNESS: Oh, I'm sorry. My apologies. This
20 appears to be a Google return, data return from a request of
21 subscriber information.

22 BY MR. TURGEON:

23 Q. Okay. What e-mail address is associated with that
24 subscriber information?

25 A. The e-mail address that's being returned, the data for

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1 that e-mail address is argelta1777@gmail.com.

2 Q. On what date was that Google account created, according to
3 the subscriber info?

4 A. According to this document, the Google account was created
5 on July 12, 2016.

6 Q. Okay. I'd like to show you what's been marked as
7 Government Exhibit 1-702. And what is this, Mr. Lee?

8 A. That is a typical Google Play receipt. When you purchase
9 an app online using the device, you would get that e-mail
10 return confirming that you purchased the app.

11 Q. And from what e-mail address was that purchase of Threema
12 made?

13 A. Yeah, that e-mail address on here is also argelta1,
14 argelta1777@gmail.com.

15 Q. And according to that exhibit, on what date was that
16 purchased?

17 A. That date on that exhibit shows July 12, 2016.

18 MR. TURGEON: Your Honor, I have here another
19 stipulation labeled Government Exhibit 12-36, which I'd like to
20 move into evidence and read to the jury.

21 THE COURT: Go ahead.

22 (Government's Exhibit No. 12-36 was received in
23 evidence.)

24 MR. TURGEON: That stipulation reads: The United
25 States and the defendant hereby stipulate and agree that the

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1 Threema encrypted messaging application was installed on the
2 cellular telephone marked as Government Exhibit 3-200 and was
3 registered to e-mail address argelta1777@gmail.com.

4 THE COURT: All right.

5 BY MR. TURGEON:

6 Q. Mr. Lee, after you finished work with that seized cellular
7 telephone, what did you do with the phone?

8 A. I processed the data first because we still have a phone
9 that's locked, so I processed the data, and during the process,
10 it recovered the pattern, the lock pattern. So now I have the
11 lock pattern of 1478 basically, and I tried that on the phone,
12 and I reassemble the phone, bring it back up, and that unlocked
13 the phone.

14 Q. It turned it on?

15 A. Yep. It turned on, and it unlocked the phone using the
16 pattern.

17 Q. And did you examine the contents of the phone?

18 A. Yeah. I had to look at the content because in the
19 request, they were looking for a certain app, so I was looking
20 for that app, and it was there.

21 Q. And could I show you what's been marked as Government
22 Exhibit 3-202? It's already in evidence.

23 Mr. Lee, do you recognize that photograph?

24 A. Yes, I do. I took it.

25 Q. And what does that photograph depict?

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1 A. That photograph is a picture of the account, Threema
2 account as it appears on the phone.

3 Q. And can I just -- can I pull up 3-203, please?

4 And did you take that photo as well?

5 A. Yes, I did.

6 Q. And 3-204? And you took that as well?

7 A. Yes, I did.

8 Q. Okay. And did you take several other photographs of
9 the messaging app?

10 A. Yeah, I took a series of photographs on the contents of
11 that app.

12 Q. Sir, after you finished examining the phone, what did you
13 do with it?

14 A. I returned the phone to the evidence control and
15 documented it on chain of custody.

16 Q. All right. With the help of the court security officer,
17 I'd like to show you what's been marked as Government Exhibit
18 4-200. That should be another cell phone.

19 Mr. Lee, have you seen that phone before?

20 A. Yes, I have.

21 Q. How can you identify it?

22 A. There, there is a unique green tint around the screws on
23 this Verizon phone. By the brand name, also.

24 Q. And is that exhibit substantially in the same condition
25 today as when you first examined it?

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1 A. Yes, it is.

2 MR. TURGEON: The government moves to admit Exhibit
3 4-200 into evidence, Your Honor.

4 THE COURT: Any objection?

5 MS. MORENO: No objection.

6 THE COURT: It's in.

7 BY MR. TURGEON:

8 Q. Mr. Lee, before beginning your examination of that phone,
9 did you review any search warrants?

10 A. Yes, I did.

11 Q. And based on that review, what, if anything, did you
12 determine?

13 A. The search warrant on the backpack where this phone was
14 seized basically allowed me to proceed with the forensic
15 examination. It gives me the legal authority.

16 Q. And what type of analysis, if any, did you perform on that
17 phone?

18 A. This phone, because of the make and model, the only
19 analysis I could do was a logical extraction.

20 Q. And through your examination of that phone, were you able
21 to determine the phone's telephone number?

22 A. Yes, I did.

23 Q. What was that?

24 A. That telephone number is, my refreshed notes here, is
25 571-236-8195.

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1 Q. And what, if anything, did you find in your analysis of
2 that phone?

3 A. In the, in the analysis using extraction with two
4 different tools, I've got the contacts, call lots, SMS, MMS,
5 and also a bunch of media files.

6 Q. Okay. And, Mr. Lee, I'm going to direct your attention in
7 that -- I believe in the folder right there should be something
8 marked Government Exhibit 4-203.

9 MR. SMITH: Objection, Your Honor. Objection.

10 THE COURT: Wait a minute. Whose witness is this?

11 MS. MORENO: It's my witness.

12 THE COURT: All right.

13 MS. MORENO: And I'm sorry.

14 THE COURT: Are you objecting?

15 MS. MORENO: Yes, Your Honor.

16 THE COURT: All right. Is this related to what we
17 had a discussion of?

18 MS. MORENO: Yes.

19 THE COURT: Do I have a copy of 203 in my book?

20 MR. TURGEON: Yes, you do, Your Honor, 4-203.

21 THE COURT: Let me take a look at it.

22 MS. MORENO: May we approach, Your Honor?

23 THE COURT: Let me take a look at it first.

24 This was actually referenced in the opening
25 statement.

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1 MR. TURGEON: That is true, Your Honor, yes.

2 THE COURT: Approach the bench, but we're going to
3 move this.

4 (Bench conference on the record.)

5 THE COURT: Mr. Kromberg in his opening statement
6 mentioned this, the smokestack. This is --

7 MS. MORENO: Judge, with respect, so the opening
8 statements, I mentioned this in my opening statement, that it
9 may not be properly before the jury at the end of the case.
10 Opening statement isn't evidence. This is not properly the
11 subject matter testimony of the CART expert. This is just
12 another way to get this stuff in.

13 Your Honor, there are 42 separate exhibits in this
14 white supremacy-Nazi category. I strongly object. It's
15 irrelevant, and it's highly prejudicial.

16 THE COURT: Well, it's not going to make sense right
17 now until Gartenstein testifies, which is tomorrow.

18 MR. KROMBERG: In fact, Judge, the next witness, if
19 we get to it, is going to be Ian Campbell, who I had originally
20 told you last week was going to be the first witness, but he
21 couldn't be the first witness.

22 THE COURT: He's the one who --

23 MR. KROMBERG: He's the one who's going to say that
24 Mr. Young said, "Don't discount the idea of an alliance with
25 the Muslims to combat the Jews." So we're going to get into

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1 this with the next witness, but we, we have to admit this
2 evidence because the defense, although they have stipulated to
3 many things, and we're very grateful for that, they did not
4 stipulate that this was an authentic document found on that
5 phone.

6 THE COURT: Well, if they have stipulated that all of
7 these exhibits were found on one of the devices of the
8 defendant --

9 MR. TURGEON: They did not stipulate to that fact,
10 Your Honor.

11 MS. MORENO: No, we didn't.

12 THE COURT: Are you doing it on the record now?

13 MR. SMITH: Yes, we've stipulated to authenticity.
14 It was a text message to someone sent. This was sent as a text
15 message to the defendant. The government knows that.

16 THE COURT: So all right. So what I'm hearing on the
17 record is that the defense is not contesting that these
18 exhibits, these problematic exhibits all were retrieved from
19 some device belonging to the defendant.

20 MS. MORENO: That is correct, Your Honor.

21 THE COURT: All right. Then we don't need this
22 witness for any of that, all right?

23 MR. KROMBERG: Sure.

24 THE COURT: Whether the exhibits actually come in
25 will depend upon the proper foundation that you lay with the

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1 future witnesses who testify, all right?

2 MS. MORENO: Thank you.

3 MR. TURGEON: Your Honor, with regard to this
4 particular exhibit, Mr. Lee will testify about the date that it
5 was created, the metadata, as well as what he was able to
6 determine as to how that image made its way onto the phone.

7 MS. MORENO: It's irrelevant. We're not contesting
8 that it was found on his device.

9 THE COURT: No, but I think the government wants
10 something else. They apparently want how long it's been
11 sitting on the device?

12 MR. TURGEON: Both how long it has been sitting on
13 the device but we also know that the defense plans to argue
14 that this was sent to Mr. Young in an unsolicited text message,
15 and Mr. Lee is going to testify as to whether or not his
16 examination revealed that to be true.

17 MR. SMITH: Okay. Then we don't contest that. We
18 don't contest it. We're not going to raise that issue at
19 trial.

20 THE COURT: Hold on to Lee as a possible rebuttal
21 witness if for some reason there's slippage.

22 MR. TURGEON: Okay.

23 THE COURT: Let's move this along, all right?

24 MS. MORENO: Thank you.

25 (End of bench conference.)

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1 MR. TURGEON: I'd like to publish Government Exhibit
2 11-220 to the jury, and that's already in evidence.

3 THE COURT: All right.

4 MR. TURGEON: 11-220, please. Can we zoom in on
5 that, please?

6 Q. Mr. Lee, I'm directing your attention to Government
7 Exhibit 11-220. Does that exhibit reflect the telephone
8 number -- a telephone number?

9 A. Yeah, there's a telephone number in there.

10 Q. And is that the same telephone number as the telephone
11 number in Nicholas Young's device that you're currently
12 discussing?

13 A. That is the same number.

14 Q. It's the same number.

15 Mr. Lee, after you completed working with that seized
16 telephone number, what did you do with that phone -- excuse me,
17 with that seized cellular telephone, what did you do with the
18 phone?

19 A. I returned the phone to evidence control and documented it
20 on chain of custody.

21 Q. Okay. With the help of the court security officer, I'm
22 going to show you what's been marked as Government Exhibit
23 10-100. And that's in this box.

24 THE COURT: It's over here, Mr. van Roekel.

25 BY MR. TURGEON:

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1 Q. Mr. Lee, could you hold that up very briefly? And could
2 you identify what that is?

3 A. This is a Toshiba laptop.

4 Q. Have you seen that laptop before?

5 A. Yes, I have.

6 Q. And how can you identify it?

7 A. I can identify it by looking at the label, make, and model
8 down here as well, and also in this particular laptop, there's
9 a unique dent on the lower left corner, right here.

10 Q. And have you conducted an examination of that laptop?

11 A. Yes, I did.

12 MR. TURGEON: You can bring it down.

13 Q. Is that laptop in substantially the same condition today
14 as when you examined it?

15 A. Yes, it is.

16 MR. TURGEON: Your Honor, the government moves to
17 admit Exhibit 10-100 into evidence.

18 THE COURT: Any objection?

19 MS. MORENO: No objection.

20 THE COURT: All right, it's in.

21 (Government's Exhibit No. 10-100 was received in
22 evidence.)

23 BY MR. TURGEON:

24 Q. And, Mr. Lee, did you review a search warrant before
25 examining that laptop?

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1 A. Yes, I did.

2 Q. And what did you determine from that?

3 A. The search warrant for the house in which the laptop was
4 seized gives me the legal authority to proceed with the
5 examination.

6 Q. What steps did you take to preserve the evidence on that
7 laptop?

8 A. I initially removed the hard drives from the laptop
9 without turning on the laptop and then produced an image of
10 that hard drive.

11 Q. Okay.

12 A. And then in the process, creating the MD5 hash as well.

13 Q. And were you able to obtain an image from that hard drive?

14 A. Yes, I have.

15 Q. And how did you know that image was identical to the
16 original?

17 A. I then run the MD5 hash calculation again on the copy
18 image and compare it to the original MD5 hash, and they match
19 identical.

20 Q. So after making that image and comparing the hash values,
21 what did you do with the original laptop?

22 A. The original laptop was reassembled and returned to
23 evidence control.

24 Q. And then what, if anything, did you do with the copy that
25 you had made of the image?

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1 A. The copy of the -- the image copy was used to conduct the
2 analysis to recover the files, the contents in that hard drive,
3 in the image, and then it's sorted and presented to the case
4 agent, so the reviewers.

5 Q. And what -- using that software, what, if anything, did
6 you find?

7 A. Basically, on that -- I've got audio files, photos, things
8 that were on the original requests, focusing on things that
9 contained words like --

10 THE COURT: Well, wait, we don't need -- we don't
11 need that at this time.

12 MS. MORENO: Objection.

13 THE WITNESS: Okay.

14 BY MR. TURGEON:

15 Q. And after you completed your review of that copy, did you
16 obtain another hash value?

17 A. Yes, I did.

18 Q. And what was the result of that?

19 A. That the hash matches the original.

20 Q. So what does that mean?

21 A. That means that, that image was not altered during the
22 entire process of recovery, data recovery.

23 Q. Okay. I'm going to direct your attention --

24 A. And it matches the original.

25 Q. Directing your attention to what's been marked as

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1 Government Exhibit 10-101-A, I believe that should also be in
2 the folder in front of you. It may be the very last document
3 or the next-to-last document. 10-101A, yes.

4 Do you recognize the information on that document?

5 A. Yes, I do.

6 Q. Have you reviewed that document previously?

7 A. Yes, I have.

8 Q. And what information, if any, is contained on that
9 document?

10 A. This is a summary of -- a subset of what's called a
11 Favorites, which is basically bookmarks from the Internet
12 Explorer browser. So this is a subset of the, the bookmarks
13 that were found on the Internet Explorer browser which is
14 called Favorites.

15 Q. And does that exhibit fairly and accurately depict
16 bookmarks that you found during your examination of that
17 laptop's hard drive?

18 A. Yes, it does.

19 MR. TURGEON: The government moves to admit Exhibit
20 10-101A into evidence, Your Honor.

21 MS. MORENO: I think there will be an objection to
22 that.

23 THE COURT: Oh, I think this is relevant. I'm
24 overruling that objection. This is in.

25 (Government's Exhibit No. 10-101A was received in

Lee - Direct

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1 evidence.)

2 MR. TURGEON: And the government moves to publish
3 that to the jury as well.

4 THE COURT: Go ahead.

5 BY MR. TURGEON:

6 Q. Mr. Lee, what is the, the fifth bookmark listed on that
7 exhibit?

8 A. "Watch New ISIS Video Shows Child Soldier Executing
9 'Spies' heavy.com.url."

10 Q. What's the next one?

11 A. The next one down is "Islamic State propaganda video
12 features Karl" -- the name is spelled S-t-e-f-a-n-o-v-i-c. I
13 will not attempt to pronounce that.

14 Q. And what's the one after that?

15 A. The one after that is "ISIS Documentary 2015 - Selling
16 Girls - YouTube.url."

17 Q. And what's the one after that, just briefly?

18 A. Http-shoebat.com." It says "watch-video-isis-savages-
19 beheading-twenty-one-copticchristians-saw-martyrs-beheaded-
20 name-jesus-fulfilled-.url."

21 Q. And then finally, what's the bookmark after that?

22 A. "Watch New ISIS Mass Execution Video Features French
23 Executioner Heavy.com.url."

24 MR. TURGEON: The Court's indulgence, Your Honor?

25 THE COURT: What does "date modified" mean?

Lee - Direct

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1 THE WITNESS: That was the last time that that date
2 was updated, modified.

3 THE COURT: What does that really mean?

4 THE WITNESS: Okay. So if, if there was an update to
5 that, to that URL, then that URL is modified.

6 THE COURT: Okay.

7 THE WITNESS: So unlike created date, created date
8 may stay the same, and later on, if the Web site updates that
9 URL for whatever reasons, it would bump the modified date.

10 THE COURT: All right.

11 MR. TURGEON: The government has no further questions
12 for Mr. Lee.

13 THE COURT: All right. Ms. Moreno?

14 MR. SMITH: Your Honor, we have one question.

15 THE COURT: No, no. This is not your witness. Is
16 this your witness or not?

17 MR. SMITH: There was one cross-examination question.
18 It was a follow-on question to what Your Honor just asked.

19 THE COURT: This is not your witness, though. Who's
20 taking responsibility for this witness?

21 MR. SMITH: Oh, you mean mine personally.

22 THE COURT: Which attorney has this case -- this
23 witness? I thought it was yours.

24 MR. TURGEON: Your Honor, I actually have one more
25 question, one or two more questions for Mr. Lee, if I may.

Lee - Direct

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1 THE COURT: Go ahead.

2 BY MR. TURGEON:

3 Q. Mr. Lee, with regard to that exhibit we were just talking
4 about, the date modified, how, if at all, does a date modified
5 change when someone visits a bookmark?

6 A. Well, the bookmark items, sometimes the bookmark is
7 updated by content, you know, if the page is updated. If
8 there's a change on the link, they will update that link as
9 well.

10 Q. So --

11 A. It's changed by the provider, by the page provider, I
12 believe.

13 Q. Are you able to say based on this date modified that
14 someone using the computer visited the bookmark on that date?

15 A. Yeah. I think, I think the modify would trigger an
16 update. When you visit that link, it would check the content,
17 maybe the cache content on the hard drive, compare it to the
18 data that is presenting. If they're the same, they're not
19 going to update it, but if they're different, they're going to
20 update it.

21 Q. So based on these bookmarks, are you able to tell when the
22 user of a computer visited the Web site listed?

23 A. I don't think I can conclusively say that, as to when they
24 visited, but, but last update was, was there because if it
25 wasn't -- if the content was the same, you wouldn't have a

Lee - Direct

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1 modified update. So if you were to visit it later on, the
2 modified date may not change if the data is not, you know, it's
3 the same.

4 Q. Are you able to say whether someone visited these Web
5 sites on these dates?

6 MR. SMITH: Objection. Asked and answered.

7 THE COURT: All right, what I need to know is which
8 attorney -- I thought, Ms. Moreno, you started out with this
9 witness, didn't you?

10 MS. MORENO: I am, Your Honor.

11 THE COURT: Yes. So the rule is the same attorney
12 stays with the witness, so only you can object. Do you have an
13 objection?

14 MS. MORENO: I do.

15 THE COURT: What's the -- stand up, please. What is
16 the objection?

17 MS. MORENO: Asked and answered, Your Honor. He did
18 ask him that question, and he said he couldn't tell him the
19 answer.

20 THE COURT: Sustained.

21 MS. MORENO: And he's gone back to it again.

22 THE COURT: Sustained.

23 BY MR. TURGEON:

24 Q. Mr. Lee, what relationship, if any, is there between the
25 date of the bookmark and the use of the computer to visit that

Lee - Direct

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1 page?

2 A. Usually when you visit a page, it's tracked in the cookies
3 basically. It's not in the URL. So that's typically how, how
4 that's worked. If they drop a cookie on your computer, it will
5 show you, you know, when you visited that day.

6 THE COURT: Mr. Lee, keep your voice up, please.

7 THE WITNESS: I'm sorry. When you, when you visit a
8 site last, they try to track your habits by updating that
9 cookie. So, so usually it's last visit. You would find, if
10 you could decipher the cookie, sometimes the codes are not as
11 easily decipherable.

12 BY MR. TURGEON:

13 Q. Was the date that the page was bookmarked necessarily on
14 or before or after the date modified, or are you not able to
15 tell?

16 A. Well, this is definitely -- the dates here definitely says
17 a visit had, was performed during those dates. Whether that
18 was the latest one or not is --

19 Q. What do you mean, performed during that?

20 A. Well, you don't -- the bookmarks aren't added
21 automatically. You have to do it. It's a manual process. So
22 if, if I have a page that I like to visit often, I'm going to
23 bookmark that page. So I will, I will manually, me, not the
24 computer, add that bookmark on that -- on your favorites.

25 Q. And --

Lee - Cross

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1 A. So, so the user will -- this is all manually added by the
2 user.

3 Q. And for each bookmark, when is that added?

4 A. The first one is --

5 MS. MORENO: Objection. Asked and answered.

6 THE COURT: No, I think this is slightly different.
7 Overruled.

8 THE WITNESS: The first one is October 25.

9 BY MR. TURGEON:

10 Q. So let's talk about the first one.

11 A. Yeah.

12 Q. On what date was that book-, was that bookmark added; are
13 you able to tell?

14 A. It was, it was last updated on October 25, 2015.

15 Q. And does that mean that someone using the computer visited
16 it on that date or not?

17 A. Definitely on that date, yeah.

18 MR. TURGEON: Okay. Thank you.

19 THE WITNESS: At some point that date, yeah, but it
20 may not be the latest date that he visited.

21 MR. TURGEON: Thank you.

22 THE COURT: All right, cross-examination?

23 MS. MORENO: Just one or two questions.

24 CROSS-EXAMINATION

25 BY MS. MORENO:

Lee - Cross

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1 Q. I'm confused, Mr. Lee.

2 THE COURT: All right, come up.

3 BY MS. MORENO:

4 Q. Date modified, I thought you said that it was those dates
5 reflected updates by the URL. I thought you had said that --

6 A. Yeah.

7 Q. -- initially.

8 A. Yeah.

9 Q. Well, so do you have any sense of when the user of the
10 computer last visited any of those Web sites? You can't tell
11 from that sheet.

12 A. No, not last visited, but the question wasn't did the
13 person visit it that day. The question was when was the last
14 visit. Yeah, that would require cookies.

15 Q. That would require cookies, and that's --

16 A. If it's the last visited --

17 Q. Let me just --

18 A. I'm sorry.

19 Q. And that's not reflected on this, on this sheet, right?
20 That information, the cookie information is not reflected on
21 this sheet?

22 A. No, the cookie is not here.

23 MS. MORENO: Right. Okay. Thank you. Nothing
24 further.

25 THE COURT: All right, anything further?

Lee - Redirect

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1 One question, so you don't have much leeway.

2 REDIRECT EXAMINATION

3 BY MR. TURGEON:

4 Q. Mr. Lee, if not the last visit, what date is represented
5 by those bookmark dates?

6 A. The first bookmark is October 25, 2015.

7 Q. And what does that mean?

8 A. That means at that, that time, somebody at least
9 updated the -- modified that bookmark.

10 Q. Thank you.

11 A. It's usually going to be the user of that computer that
12 adds that bookmark in there.

13 MR. TURGEON: Thank you.

14 THE COURT: Any recross?

15 MS. MORENO: No, Your Honor.

16 THE COURT: All right. Then I believe this witness
17 has completed his testimony, correct?

18 MR. TURGEON: Yes, Your Honor.

19 THE COURT: All right. Thank you, Mr. Lee.

20 Is anyone going to call Mr. Lee again? No?

21 MS. MORENO: No, Your Honor.

22 THE COURT: All right. Then, sir, you're excused, so
23 you may stay in court now and watch the proceedings, or you may
24 leave, but don't discuss your testimony or anything you see or
25 hear with any witness who has not yet testified.

1 THE WITNESS: Yes, Your Honor.

2 THE COURT: Thank you.

3 (Witness excused.)

4 THE COURT: All right, your next witness?

5 MR. TURGEON: Your Honor, I have one exhibit to
6 offer, and it's a self-authenticating exhibit.

7 THE COURT: All right.

8 MR. TURGEON: It's marked Government Exhibit 18-100.

9 THE COURT: Is there any objection to 18-100?

10 MR. SMITH: Yes, we do object, Your Honor, because
11 the Court has already ruled on this issue.

12 THE COURT: Wait a minute. Let me take a look at it.

13 MR. TURGEON: Your Honor, if I may, the Court did
14 rule on an issue having to do with this; however, the Court's
15 ruling did not -- expressly did not prevent the government from
16 introducing additional evidence on this point.

17 THE COURT: All right, let me see it.

18 MR. TURGEON: I have a copy for Your Honor.

19 THE COURT: All right, hand it up, please.

20 MR. TURGEON: I'll hand it to the court security
21 officer. Thank you.

22 Your Honor, there are two documents there. The first
23 is the government's exhibit. The second is the original Web
24 page for Your Honor's reference.

25 And with regard to the relevance, Your Honor, I'll

1 point Your Honor to about three-quarters of the way down the
2 second page.

3 THE COURT: Approach the bench.

4 (Bench conference on the record.)

5 THE COURT: All right, an element of the government's
6 case is that they have to establish there's an event here,
7 involved here within the proper time period, and we had this
8 issue come up. This appears to be a document from the
9 Department of State that lists ISIS on their designated
10 counterterrorist organizations effective 2004.

11 If you're going to dispute this issue, we'll put
12 evidence in -- we'll put evidence on. If you're not disputing
13 it, we don't need all of this.

14 MR. SMITH: It's in dispute.

15 THE COURT: I'm sorry?

16 MR. SMITH: It is in dispute.

17 THE COURT: All right.

18 MR. SMITH: I think their expert will, will discuss
19 this, will cover this issue.

20 THE COURT: Well, then this exhibit goes in then.

21 MR. TURGEON: Yes.

22 MR. SMITH: Oh, okay. We misunderstood. We thought
23 the government was attempting to relitigate this issue of an
24 instruction.

25 THE COURT: No, no, no. What they want to do now is

Campbell - Direct

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1 since we have this issue that's come up is they've got to put
2 on evidence of it. This is a document that they want in.

3 No objection? All right, it's in.

4 MR. TURGEON: Thank you, Your Honor.

5 (End of bench conference.)

6 THE COURT: No, no, that, I think, is the only
7 exhibit we've got.

8 All right, I have officially allowed 18-100 to be
9 admitted into evidence.

10 MR. TURGEON: Thank you, Your Honor.

11 (Government's Exhibit No. 18-100 was received in
12 evidence.)

13 THE COURT: All right, your next witness?

14 MR. KROMBERG: The government calls Ian Campbell.

15 THE COURT: All right.

16 IAN PAUL CAMPBELL, GOVERNMENT'S WITNESS, AFFIRMED

17 DIRECT EXAMINATION

18 BY MR. KROMBERG:

19 Q. Mr. Campbell, please state your full name and spell your
20 last name for the record, and be aware that you need to lean
21 forward a little bit so that your voice gets into the
22 microphone.

23 A. Ian Paul Campbell, C-a-m-p-b-e-l-l.

24 Q. I don't know if that's loud enough.

25 THE COURT: Could you speak louder, sir?

Campbell - Direct

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1 THE WITNESS: Ian Paul Campbell, C-a-m-p-b-e-l-l.

2 BY MR. KROMBERG:

3 Q. All right. So when you, when you answer from now on,
4 please keep up that timbre of voice and also that leaning
5 forward.

6 Mr. Campbell, how are you employed?

7 A. I'm a detective with the Arlington County Police
8 Department.

9 Q. And how long have you been so employed?

10 A. Since 2006.

11 Q. You're not here in the capacity of a detective in
12 Arlington County, correct?

13 A. Correct.

14 Q. You've been subpoenaed?

15 A. I have.

16 Q. Okay. Do you know the defendant in this case?

17 A. I do.

18 Q. Okay. Can you please point him out and describe what he's
19 wearing?

20 A. The blue suit with the blue tie.

21 THE COURT: Any issue about the identification?

22 MR. SMITH: No.

23 THE COURT: All right.

24 BY MR. KROMBERG:

25 Q. And how do you know the defendant in this case?

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1 A. We went to college together.

2 Q. And where was that?

3 A. George Mason University.

4 Q. Okay. And when was that?

5 A. 1998 until around 2002.

6 Q. Okay. So please look at Government Exhibits 13-101, 102,
7 103, and 104; and after you've had a chance to look at them,
8 I'm going to ask you if you recognize them.

9 A. I recognize all these exhibits.

10 Q. And those are your items that you provided to the
11 government for use in this case, correct?

12 A. They are.

13 Q. Okay. And where did you get those items?

14 A. I got them at a meeting between the National Alliance -- a
15 group called the National Alliance and a group called the
16 American Friends of the British National Party.

17 Q. And when was that?

18 A. I believe spring of 2001.

19 Q. Was Mr. Young involved in that at all?

20 A. He was.

21 Q. How did that come about?

22 A. We were both involved in a class called European Racism.
23 As part of that class, we found out that they were having a
24 meeting of these two groups to be held in Arlington County. We
25 approached the professor of this class and asked if we could

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1 interview the person that is head of this group called the
2 American Friends of the British National Party for this class.

3 Q. What was the reason for interviewing the head of the
4 American Friends of British National Party for the course on
5 European racism?

6 A. It was part of a class project.

7 Q. Excuse me, why this particular person as opposed to any
8 other person?

9 A. The opportunity presented itself for -- to have a
10 firsthand knowledge, what we call a primary source, where I
11 could actually go and talk to the head of these groups that we
12 were studying and interview them and ask them what their views
13 on certain subjects were.

14 Q. So what were the views of the British National Party that
15 made them relevant to the course on European racism as you
16 understood it at the time?

17 A. The British National Party, as I understood at the time,
18 was a xenophobic political party. They were more of like a
19 Britain for the British, very -- it was a racist group
20 essentially.

21 Q. And how did you get the opportunity to go meet the, was it
22 Mark Cotteril?

23 A. I believe that was his name, yes.

24 Q. How did you get the opportunity to interview Mark
25 Cotteril?

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1 A. I can't remember off the top of my head. It was arranged,
2 I think, through a friend or through the professor himself
3 where we could approach this guy. We talked to him. We gave
4 him a list of questions beforehand. He agreed to do it, and we
5 met him at the rally in Arlington.

6 Q. So it was a -- you mentioned the National Alliance. What
7 was the National Alliance? That was different from the
8 American Friends of the British National Party, right?

9 A. It is.

10 Q. Okay. What is a National Alliance?

11 A. The National Alliance is another, it's a neo-Nazi group.
12 It's an organization.

13 Q. And you mentioned a rally, so where was this rally, and
14 what happened there?

15 A. It was basically a meeting. I don't remember exactly what
16 the topic of the meeting was. It was held at a Thai restaurant
17 in Arlington, Virginia.

18 As part of this meeting, the group then went to the,
19 I believe it was either the German or the Austrian Embassy. At
20 the time, the Country of Austria elected a far, essentially a
21 racist guy as either prime minister or some sort of -- he held
22 some sort of political office, and the government wasn't
23 allowing him to hold that political office, so this group went
24 to protest the embassy to show their dissatisfaction for that
25 decision.

Campbell - Direct

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1 Q. How many people do you recall were at that
2 meeting/gathering/rally, whatever you're going to term it as,
3 in Arlington, at the Thai restaurant?

4 A. I would say maybe 25 at most.

5 Q. So why would you -- why do you characterize them as
6 neo-Nazis?

7 A. Based on the publications that they put out, based on the
8 information that I know about them through research, through my
9 knowledge of them, through studying them.

10 Q. Okay. Well, let me turn your attention to a slightly
11 different topic. Over the years after college, did you
12 continue to socialize with the defendant?

13 A. After college, it was on and off maybe, not that much.

14 Q. Did you know him to use any other names or any other
15 identities?

16 A. I knew him to use the name Klaus.

17 Q. Was there a last name that went with Klaus?

18 A. I can't remember off the top of my head.

19 Q. Did you -- have you heard the name Düsselkamp?

20 A. Yes.

21 Q. Was it Klaus Düsselkamp?

22 A. From what I remember, yes.

23 Q. And what was -- who was Klaus Düsselkamp in connection
24 with the defendant?

25 A. From what I remember, it was sort of like a pseudonym. I

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1 know he was involved in a reenactment group, and from what I
2 remember, he would use that name for his reenactment group.

3 Q. A World War II reenactment group?

4 A. Yes.

5 Q. And Storm Trooper Klaus Düsselkamp, what side was he on in
6 World War II? Was he on the American side or the other side?

7 A. It was German.

8 Q. Okay. When was -- before today, when was the last time
9 that you saw the defendant?

10 A. I want to say early in 2010.

11 Q. And what was the occasion in 2010?

12 A. I'd run into him at work. Me being a police officer in
13 Arlington and him with his profession, he was also in
14 Arlington. We would run across each other, and in 2010, I was
15 celebrating my 30th birthday and invited him to Washington,
16 D.C., as part of that.

17 Q. I'd like you to take a look at an exhibit, it should be --
18 the court security officer should be able to provide it to
19 you -- 11-400.

20 MR. SMITH: Your Honor, we object on 403 grounds.

21 This is a running objection for all the pieces of this
22 testimony.

23 THE COURT: All right, let me, let me just see what
24 this is.

25 All right, the objection is overruled.

Campbell - Direct

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1 BY MR. KROMBERG:

2 Q. Mr. Campbell, do you recognize that photo?

3 A. I don't recognize the photo, but I recognize the license
4 plate.

5 Q. Do you recognize the truck?

6 A. I don't recognize the truck itself, no.

7 Q. But you recognize the license plate?

8 A. I do.

9 Q. Okay. And what do you recognize the license plate as?
10 Belonging to anyone you know?

11 A. It did belong to the defendant.

12 MR. KROMBERG: Okay. The government moves in
13 Government Exhibit 11-400, and we can publish it to the jury,
14 but we're going to get to it later, Judge. I think let's just
15 publish it now for a moment.

16 THE COURT: Yeah, I'm letting it in over the defense
17 objection.

18 (Government's Exhibit No. 11-400 was received in
19 evidence.)

20 MR. KROMBERG: And if you can zoom in on the license
21 plate? FRI KRP? Okay, thank you.

22 Q. So, Mr. Campbell, at your birthday party, did, did you
23 receive a gift from Mr. Young?

24 A. I did.

25 Q. The court security officer is going to give you what's

Campbell - Direct

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1 been marked Government Exhibit 13-105, which is a, a book.

2 Do you recognize that?

3 A. I do.

4 Q. And what is that?

5 A. It is a book called *Serpent's Walk*.

6 Q. And who, who owns that book? I mean, whose book is that?

7 A. Well, it was given to me as a gift.

8 Q. Okay. By, by Mr. Young?

9 A. Correct.

10 Q. All right. What is that book about?

11 A. I'm not quite sure. I didn't read it.

12 Q. Who is the author?

13 A. A man named Randolph Calverhall.

14 Q. I'm going to show you what's been marked Government
15 Exhibit 10-860, which is -- 10-860, and I'm going to ask if you
16 recognize that other book.

17 I'd also like to read a stipulation, Judge.

18 THE COURT: Well, let's do one thing at a time,
19 Mr. Kromberg.

20 MR. KROMBERG: Right, but the stipulation applies to
21 this particular book.

22 THE COURT: All right, hold on one second.

23 All right, go ahead.

24 MR. KROMBERG: So the stipulation is Government
25 Exhibit 12-22: The United States and the defendant hereby

Campbell - Direct

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1 stipulate and agree that Government Exhibits 10-400 through
2 10-532, Government Exhibits 10-533 through 10-621, Government
3 Exhibits 10-650 through 10-825, and Government Exhibits 10-850
4 through 10-900 were found by the FBI in the course of searching
5 the residence of the defendant, Nicholas Young, in August 2016.

6 THE COURT: It doesn't mean they're all going to be
7 entered into evidence.

8 MR. SMITH: Your Honor, we stipulate to authenticity.
9 We have a running objection to every piece of evidence in
10 this --

11 THE COURT: Ladies and gentlemen, I want to caution
12 you on this evidence that's coming in tonight and tomorrow, and
13 I think I mentioned it when we did the voir dire, and you-all
14 told me that you could evaluate the evidence in the proper
15 context in which it's being offered.

16 Because this case involves the defense of entrapment,
17 as everybody has explained to you at the beginning, the issue
18 about the mindset of the defendant is important.

19 I'm allowing some but not all of this type of
20 evidence about the defendant's involvement or interest in what
21 were considered to be anti-Semitic groups in evidence because
22 the government has to link some of that to whether or not he
23 was induced by government action to get engaged in all the
24 activities you've been hearing about or whether or not, you
25 know, he was absolutely innocent and it was all the government

Campbell - Direct

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1 that overwhelmed his free will and got him incited into doing
2 this.

3 So I want you to understand he is not being charged
4 and you cannot find him guilty for possessing Nazi or
5 anti-Semitic literature. He's not being charged with that, he
6 cannot be convicted for that, but the evidence is being allowed
7 in to be considered, that's all, as whether or not it helps or
8 doesn't help to establish the predisposition issue, all right?
9 So let's go along with this now.

10 And the defense has a running objection to all of
11 this.

12 MR. KROMBERG: Right. And although I think this one
13 would be odd because 10-861 -- 10-861, if you can --

14 THE COURT: Well, you're talking about 10-860 right
15 now.

16 MR. KROMBERG: Let me, let me just switch it back to
17 861. That will be easier. 861 we could do with a photo if
18 necessary. Yes, basically a photo.

19 Q. Is that a photo of the book *Serpent's Walk*?

20 A. It is.

21 MR. KROMBERG: Right. I will represent to the Court
22 that that is just the photo. We actually have the book, so
23 that -- Mr. Campbell, is that the same book -- excuse me, is
24 that a copy of the same book that the defendant gifted you in
25 about 2010 for your birthday?

Campbell - Direct

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1 THE WITNESS: So this photo is the same book as the
2 book --

3 BY MR. KROMBERG:

4 Q. Is it a copy of the same book? Because that, that piece
5 of paper is supposed to represent the book that was seized from
6 the defendant's house in August 2016, so I'm asking if that is
7 the copy of the same book.

8 THE COURT: No, is that the cover of the book?

9 THE WITNESS: It appears so, yes.

10 THE COURT: All right, that's a picture of the cover
11 of the book.

12 MR. KROMBERG: Okay.

13 THE COURT: Are you moving 861 in?

14 MR. KROMBERG: Yes, Judge.

15 THE COURT: All right. Over the defense objection,
16 it's in.

17 (Government's Exhibit No. 10-861 was received in
18 evidence.)

19 BY MR. KROMBERG:

20 Q. Now, 860 is before you as well, correct? That's a cover
21 of another book.

22 A. Correct.

23 Q. Do you know what that book is?

24 A. I do.

25 Q. Okay.

Campbell - Direct

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1 MR. SMITH: Objection, Your Honor. This is the
2 expert testimony that Your Honor excluded. One of these books
3 was not gifted to Mr. Campbell, and he is purporting to testify
4 about it as an expert.

5 THE COURT: Well, wait a minute. Not as -- have you
6 seen this book before?

7 THE WITNESS: I have.

8 THE COURT: Have you read it?

9 THE WITNESS: No.

10 THE COURT: You've only seen it?

11 THE WITNESS: Yes.

12 THE COURT: In what context did you see it?

13 THE WITNESS: I provide training for the police
14 department, and I've put that in.

15 THE COURT: But that's all -- you've not actually
16 read the book itself?

17 THE WITNESS: No, I have not.

18 THE COURT: I'll sustain the objection.

19 MR. KROMBERG: Well, Judge, I actually didn't want to
20 ask what the book was about. I wanted to ask who the book is
21 by.

22 THE COURT: Well, how can you know what the book is
23 about if you haven't read it?

24 MR. KROMBERG: I was going to talk about the cover of
25 the book and who is it by and who is it published by.

Campbell - Cross

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1 MR. SMITH: Your Honor, objection. This is exactly
2 what the Court ruled on before trial.

3 THE COURT: Yeah, I'm going to -- I'm going to at
4 this point sustain the objection. 861 is in; 860 is not in.

5 BY MR. KROMBERG:

6 Q. Okay. Going back to the meeting you went to with
7 Mr. Young in connection with your college course, in the course
8 of your discussions with Mr. Young about that meeting, did the
9 subject of Muslims come up?

10 A. It was not a discussion with him, no.

11 Q. If it was not a discussion with him, did the subject of
12 Muslims come up when you were leaving that meeting?

13 A. It did.

14 Q. Okay. And what did Mr. Young say at that point?

15 A. At the time, the participants of the meeting, including
16 the person I was interviewing, was having a discussion with
17 another person there. I don't know if it was about Israel or
18 about Muslims in general or about Jewish people, I can't
19 recall, but in the course of that conversation, Mr. Young
20 interjected something to the effect of, "Don't discount the
21 Muslims' ability to fight against the Jews."

22 MR. KROMBERG: Okay. Thank you. Thank you,
23 Mr. Campbell. The defense may have questions for you.

24 CROSS-EXAMINATION

25 BY MR. SMITH:

Campbell - Cross

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1 Q. Good evening, Mr. Campbell. Did you say you were
2 subpoenaed to appear here today?

3 A. I was.

4 Q. So you're not coming here freely, right?

5 A. Correct.

6 Q. So you're coming here to testify today in an attempted
7 material support for terrorism case in 2017 --

8 MR. KROMBERG: Objection, Judge. That's totally
9 irrelevant to anything that this witness can answer.

10 THE COURT: Now, wait a minute. It's also a long
11 speaking question, which I advised everybody to try to reduce.
12 Just ask your question directly.

13 BY MR. SMITH:

14 Q. You understand that you're here to testify today in this
15 material support case --

16 MR. KROMBERG: Objection, Judge. It's irrelevant
17 what --

18 MR. SMITH: I haven't finished my question, Your
19 Honor.

20 MR. KROMBERG: It's irrelevant.

21 THE COURT: Mr. Kromberg, have a seat.

22 Do you understand why you're here today?

23 THE WITNESS: I do, Your Honor.

24 THE COURT: What's your understanding of why you're
25 here today?

Campbell - Cross

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1 THE WITNESS: The accused is -- or the defendant is
2 accused of material support.

3 THE COURT: And the government asked you to testify?

4 THE WITNESS: They did.

5 THE COURT: That's fine. Ask your next question.

6 BY MR. SMITH:

7 Q. So it's your testimony that you had a project in a George
8 Mason University class?

9 A. Correct.

10 Q. In 2000?

11 A. I don't -- I think it was 2001.

12 Q. 2000-2001 approximately. You couldn't remember when you
13 first spoke to the government about that?

14 A. It was a spring class, yeah. No, I couldn't remember.

15 Q. Okay. And then it's your testimony that ten years later,
16 the defendant gave you a book, and that book is not the subject
17 of Muslims or Islam, correct?

18 A. I haven't read the book. No, I don't know.

19 Q. So you haven't read the book that Nicholas gave you, and
20 you're coming here to testify today that he gave you --

21 MR. KROMBERG: Objection, Judge.

22 THE COURT: Have a seat.

23 That's argumentative. Sustained.

24 BY MR. SMITH:

25 Q. So at some point before your testimony here today, the

Campbell - Cross

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1 FBI -- or the government called you in for an interview, right?

2 A. Correct.

3 Q. When was that?

4 A. I don't recall off the top of my head.

5 Q. Was it this year or --

6 A. Yes, I believe so.

7 Q. In January of 2017?

8 A. I don't remember.

9 Q. Okay. Where was that meeting?

10 A. There was a meeting here.

11 Q. What is "here"?

12 A. At the U.S. Attorney's Office.

13 Q. So did they call you and tell you to come to the U.S.
14 Attorney's Office?

15 A. I don't remember the exact way I came in to be called
16 here, yeah. No.

17 Q. But they reached out to you, not vice versa, right?

18 A. Correct.

19 Q. And in the meeting, who was at the meeting?

20 A. I believe Mr. Kromberg and the agent next to him.

21 Q. And did they tell you what the purpose of that meeting
22 was?

23 A. To talk about the defendant.

24 Q. And what sort of questions did they ask you?

25 A. Basically about the testimony that I just gave, about my

Campbell - Cross

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1 interactions with him over the years, the statement that he
2 made at this rally.

3 Q. So did they ever ask you about militant Islam?

4 A. Not that I remember off the top of my head.

5 Q. So is it fair to say that the purpose of the meeting was
6 to ask you about your experience with Mr. Young in 2000 as a
7 college roommate?

8 MR. KROMBERG: Objection, Judge. To characterize the
9 purpose of the meeting, the purpose of the meeting from the
10 government's side is irrelevant. The purpose of the meeting
11 from the, from the witness's side is that he was asked to come
12 in.

13 THE COURT: I don't know why you're objecting,
14 Mr. Kromberg. It's late in the day, and this is not anything
15 that's harmful to the government's case. Let's move on.

16 BY MR. SMITH:

17 Q. So, Mr. Campbell, you were an old friend of Mr. Young from
18 the ROTC, correct?

19 A. Correct.

20 Q. You were his roommate in 2000 at George Mason, correct?

21 A. I don't remember which year it was but --

22 Q. You were his roommate in your senior year at George Mason?

23 A. It was not my senior year, I believe.

24 Q. Which year was it in college?

25 A. I want to say it was maybe sophomore or junior. I had

Campbell - Cross

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1 another roommate that moved out to live off campus, and he
2 basically came in and stayed in his room.

3 Q. Was Mr. Young a Muslim when you were a roommate with him?

4 A. No, he was not.

5 Q. Was he a Catholic?

6 A. I don't believe so, no.

7 Q. You don't, okay.

8 So when you spoke to the government earlier this
9 year, could you remember when you took this European racism
10 class?

11 A. I believe it was spring 2001. It was around that time.

12 Q. When the government asked you about it, you didn't
13 remember what time the class -- what year the class was, right?

14 A. Correct.

15 Q. Okay. And then at some point in your meeting with the
16 government in -- earlier this year, in January 2017, you
17 realized the government was collecting information about white
18 supremacism for this about Nicholas Young, correct?

19 A. I believe so, yes.

20 Q. And then you told the government attorneys that Nicholas
21 and yourself had been in a project in a European racism class,
22 right?

23 A. Correct.

24 Q. And you didn't remember the date of the, the year in which
25 you took this class initially with the government?

Campbell - Cross

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1 A. Correct.

2 Q. But you did remember that you had a class project in which
3 you went to a British National Party meeting, correct?

4 A. It was American Friends of the British National Party.

5 Q. At a Thai restaurant, correct?

6 A. Correct.

7 Q. Where 50 people attended?

8 A. I don't think it was that many.

9 Q. And that there was an individual named Mark who was going
10 to be interviewed?

11 A. Correct.

12 Q. And he spoke with a reverend?

13 A. Yes.

14 Q. And this reverend was speaking about Muslims?

15 A. I don't know if it was the reverend who was speaking about
16 Muslims or who was speaking about Muslims or if they were
17 speaking about Israel or Jewish people. I don't remember.

18 Q. You remembered all of those details? You remembered all
19 of those details in your conversation with the government in
20 January of 2017?

21 A. I don't remember, no.

22 Q. Do you remember what other classes you took at Mason in
23 2000?

24 A. Not off the top of my head, no.

25 Q. Do you remember the names of any of your professors?

Campbell - Cross

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1 A. The professor in that class was Gillette. I've -- I mean,
2 I can rattle off names of my professors. I don't know if it
3 was that particular year.

4 Q. So you said that you don't remember basically which
5 classes you took?

6 A. At that time?

7 Q. Yeah.

8 A. I mean, I remember which classes I took. I couldn't give
9 you a chronological order of which classes I took when.

10 Q. Do you remember any other projects you worked on besides
11 the British National Party meeting project?

12 A. No.

13 Q. Okay. So you told the government's attorneys in January
14 of 2017 that you invited Nicholas to your 30th birthday party?

15 MR. KROMBERG: Objection, Judge. That's misstating
16 what the witness has said. The witness said he spoke to me and
17 to Special Agent Caslen. He didn't say government attorneys.

18 THE COURT: But you are a government attorney,
19 Mr. Kromberg. We don't need this kind of an objection.

20 Overruled.

21 BY MR. SMITH:

22 Q. So the question was when you were speaking with
23 Mr. Kromberg and Agent Caslen, you told them that you invited
24 Nicholas to your 30th birthday party?

25 A. Correct.

Campbell - Cross

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1 Q. That was in 2009?

2 A. That was 2010.

3 Q. 2010. And that this party was -- did you tell
4 Mr. Kromberg and Agent Caslen who was invited to your birthday
5 party?

6 A. I don't believe I said anything specific, no.

7 MR. SMITH: I've got a 302 dated January 17, 2017.

8 It's an interview of Ian Campbell.

9 MR. KROMBERG: Your Honor, we've had a long time of
10 improper cross-examination. If the question is if it refreshes
11 his memory, that's the only question that is appropriate here.

12 THE COURT: That is correct. Take a look at the 302,
13 Officer Campbell, and see --

14 BY MR. SMITH:

15 Q. If you turn to the second page, there's a paragraph in
16 which you're talking about, you seem to be talking about --

17 MR. KROMBERG: Objection.

18 MR. SMITH: I'm helping --

19 MR. KROMBERG: Not Mr. --

20 THE COURT: Just say: Look at page 2.

21 MR. KROMBERG: Does it refresh your recollection?
22 That's the appropriate question.

23 THE COURT: Do you see -- you're looking at page 2?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: Does that refresh your memory?

Campbell - Cross

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1 BY MR. SMITH:

2 Q. About the 30th birthday party.

3 A. Yes.

4 Q. So did you -- do you recall telling the -- Mr. Kromberg
5 and Agent Caslen whether you invited any of your friends -- any
6 other friends to the party?

7 A. I don't recall telling them, but I do remember there
8 obviously being more people at my 30th birthday that I -- I
9 didn't name them --

10 Q. Did you tell Mr. Kromberg that you had invited --

11 MR. KROMBERG: Objection.

12 BY MR. SMITH:

13 Q. -- your liberal Jewish friends?

14 THE COURT: Wait. Mr. Smith, you are again talking
15 over the witness. You need to listen to him. Let him finish.

16 MR. SMITH: He had --

17 THE COURT: No. He started to object because you
18 were talking while the witness was talking.

19 All right, go ahead and finish your statement, sir.

20 THE WITNESS: I had friends there that -- yeah, my
21 friends, they come from all different walks of life, and some
22 of them happen to be liberal, some of them happen to be Jewish.

23 BY MR. SMITH:

24 Q. And so you told the government, Mr. Kromberg and Agent
25 Caslen, that Mr. Young gave you a copy of *Serpent's Walk* for

Campbell - Cross

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1 your birthday, right?

2 A. Correct.

3 Q. Do you remember that exchange at your birthday when
4 Mr. Young gave you the book?

5 A. Vaguely. I remember receiving the book from him and
6 seeing it.

7 Q. Do you remember your reaction?

8 A. I thought it was kind of odd. I may have just put it in
9 my bag.

10 Q. Did you, did you think it was funny?

11 A. I thought it was odd. I may have, I may have kind of like
12 laughed it off, as I normally would in a situation like that,
13 yes.

14 Q. Did you have an interest in history at the time on your
15 30th birthday?

16 A. I do.

17 Q. Like, what kind of history?

18 A. All sorts of history. My dad was a historian. He's an
19 author so --

20 Q. World War II history as well, right?

21 A. As well, yes.

22 Q. Okay. So, so after you have a meeting with the
23 government's attorney, Mr. Kromberg, and the case agent, Agent
24 Caslen, did you take some sort of action after you met them to
25 assist them in this case?

Campbell - Cross

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1 A. I don't understand your question.

2 Q. So after your -- so you had a meeting sometime this year,
3 earlier this year --

4 A. Okay.

5 Q. -- when you met with Mr. Kromberg sitting next to me and
6 Agent Caslen, correct?

7 A. Correct.

8 Q. And did you take some sort of action after your meeting to
9 assist in the prosecution of the case?

10 A. What would this action be? I don't understand what you
11 mean.

12 Q. You don't recall next steps after you met with the
13 government to sort of help out, help uncover some of the
14 evidence that would be used in this case?

15 A. I retrieved the book from my storage unit.

16 Q. Okay. Did, did you reach out to one of your professors
17 about this European --

18 A. I did.

19 Q. Okay. Do you recall e-mailing him and telling him about
20 this case and inquiring whether the professor might have some
21 materials that would be useful to this case?

22 A. I do.

23 Q. And what did you -- and did the government ask you to do
24 that?

25 A. I don't remember.

Campbell - Cross

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1 Q. Do you think you would have done it on your own
2 initiative?

3 A. Yes, probably.

4 Q. Do you remember what you asked your professor?

5 A. As part of that class, it was an interview, and it was
6 videotaped on a VHS, I believe it was. It could have been a
7 smaller tape. Either way, it was videotaped, and the videotape
8 was submitted to the professor.

9 There was an issue with the audio on the videotape,
10 so the interview was kind of pointless because the microphone
11 wasn't working, and that was the last I remember of the
12 videotape, so I thought that maybe he still had it somewhere.

13 Q. So when you reached out to this professor from the
14 European racism class, did you sort of explain to the professor
15 in what capacity you were seeking this information?

16 A. I did.

17 Q. And what did you tell him?

18 A. I don't remember off the top of my head, but I said
19 something about the investigation.

20 Q. Can you just flip to the last page on the -- in the
21 document I gave you? It's an e-mail from you to the professor
22 dated January 19, 2017. It's the second paragraph?

23 A. Yep.

24 Q. Does that refresh your recollection?

25 A. It does.

Campbell - Cross

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1 Q. And what did you -- and what did you tell your professor
2 that -- in what capacity did you tell the professor you were
3 writing to him?

4 A. It was in an investigative capacity.

5 Q. You told him that you were working with the FBI in this
6 case, right?

7 A. I did.

8 Q. What did you mean by that?

9 A. The FBI was obviously investigating the defendant and
10 asked me these questions, and I recalled these things, and I
11 asked the -- I told the professor basically why I was reaching
12 out for.

13 Q. So did you not understand that they were interviewing you
14 as a potential witness? Did you understand that the government
15 was interviewing you to work with the FBI in this
16 investigation?

17 A. I did.

18 Q. Or as a witness?

19 A. As a witness.

20 Q. That's what you meant here by "working with the FBI"?

21 A. Correct.

22 Q. Okay. So at some point during your meeting in January of
23 2017 with, with the government attorney and the, and the case
24 agent, do you recall whether you told them about how often you
25 were still seeing Nicholas Young after college?

Campbell - Cross

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1 A. I don't recall exactly, but it was on and off. It was
2 intermittent.

3 Q. How often would you say?

4 A. In which period? I mean --

5 Q. I mean, so you were roommates in 2000. 2000, correct?

6 A. I don't -- around that time, yes.

7 Q. So how often would you say you met -- you saw Nicholas
8 Young between 2000 and 2010?

9 A. Not very often.

10 Q. Wasn't it like a couple times a year to get drinks?

11 A. Yeah, maybe.

12 Q. Okay.

13 A. And that was more towards the end of college, and then
14 after that period, it was probably like a four- or five-year
15 period where, you know, we really didn't see each other. I
16 really didn't know what he was doing until I saw him at work at
17 one point.

18 Q. So is it fair to say when you lived with Mr. Young, he was
19 not a -- didn't give indications of militant radical Islamism?

20 A. No, he did not.

21 Q. Okay. Just a few more questions. So when you were in
22 college together, what would you and Young -- Nicholas Young do
23 together? Did you hang out?

24 A. Yeah, we would go to concerts together.

25 Q. Like rock shows?

Campbell - Cross

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1 A. That's pretty much the extent of it.

2 Q. Clubs, right?

3 A. Yeah.

4 MR. SMITH: That's all, Your Honor.

5 THE COURT: All right. Mr. Kromberg, is there any
6 redirect?

7 MR. KROMBERG: No, Your Honor.

8 THE COURT: All right. I assume that no one's going
9 to call Officer Campbell again?

10 MR. KROMBERG: The government is not.

11 THE COURT: How about the defense?

12 MR. SMITH: No.

13 THE COURT: No?

14 All right, sir, then you're excused as a witness.

15 Actually, we're going to be shutting things down. So just
16 don't discuss your testimony with any witness who has not yet
17 testified.

18 THE WITNESS: Thank you, Your Honor.

19 (Witness excused.)

20 THE COURT: All right, ladies and gentlemen, we're
21 actually moving quite well. I can give you tomorrow a much
22 better time estimate, but we are moving faster. I will need
23 you back here at nine o'clock, however, tomorrow morning, but
24 you're getting 15 minutes early released tonight, all right?

25 Again, please remember my cautions. Do not try to

1 conduct any investigations. Stay away from, you know, don't
2 start researching URLs and all that kind of stuff, all right?

3 It's really important again you get a good night's
4 sleep, keep following my instructions, and we'll see you-all
5 back here promptly at nine o'clock tomorrow morning.

6 All right, we're going to stay in session for a
7 minute or two.

8 (Jury out.)

9 THE COURT: Now, again, I don't think it's ever wise
10 for any attorney to object if the objection isn't really -- if
11 the question is not hurting the issue, and, Mr. Kromberg, I
12 think you must be tired because I don't think some of your
13 objections were necessary.

14 MR. KROMBERG: I'm sure you're right, Judge, but it
15 is also true that ineffective assistance of counsel comes back
16 to bite the government, not the defense. When he's handing
17 up -- when Mr. Smith is handing up exhibits to a --

18 MS. MORENO: I'm sorry, that's so insulting.

19 THE COURT: Wait, wait. Have a seat.

20 MR. KROMBERG: After he's been repeatedly told to
21 mark the exhibits, give it to the witness, and he doesn't do
22 it, our record, as the Court has said, is going to be a mess.

23 THE COURT: But remember, these are not going into
24 evidence. These 302s are not in the evidence. They've not
25 been moved into evidence. All this discussion about all these

1 documents, they're not in evidence.

2 MR. KROMBERG: Okay.

3 THE COURT: I haven't heard very many times --

4 MR. SMITH: Your Honor, we just object to that
5 statement, which is kind of extraordinary, insulting,
6 unprofessional.

7 THE COURT: Excuse me, it's late in the day, and
8 we're not going to have this type of back-snapping at each
9 other. Look, this case has to stay on track. You've done a
10 pretty decent job.

11 I think tomorrow, I want to make sure that we don't
12 have any extraneous problems tomorrow. So the order of
13 witnesses for tomorrow, Mr. Kromberg, is who, Officer McNulty?
14 I'm looking at the list you gave me.

15 MR. KROMBERG: Right. If -- we have to find out if
16 Mr. -- I think it is true that it would be Mr. McNulty,
17 Mr. Menzies --

18 THE COURT: I'm sorry, what is the purpose of the
19 Fairfax County officer?

20 MR. KROMBERG: He was a roommate of, of Mr. Young
21 from approximately 2004 to 2007. He is going to talk about --

22 THE COURT: A little bit like this testimony?

23 MR. KROMBERG: Correct.

24 THE COURT: All right.

25 MR. KROMBERG: Purely predisposition issues. And

1 then Mr. Menzies replaced Mr. McNulty as the roommate from
2 approximately 2007 to 2010.

3 I think then we would go to Professor
4 Gartenstein-Ross, then the summary -- then Officer Dill from
5 the Metropolitan Washington Police Department, and then the
6 summary witness, Agent Caslen.

7 THE COURT: All right. So you're reversing the order
8 slightly. Agent Caslen is your last witness?

9 MR. KROMBERG: Correct.

10 THE COURT: All right, that's fine.

11 MR. KROMBERG: Correct. I believe that Ms. Dill is
12 going to be very, very short. I think Mr. McNulty is going to
13 be pretty short, although there is an issue that I think we do
14 need to talk about before we get to Mr. McNulty.

15 THE COURT: All right.

16 MR. KROMBERG: And that is that he's going to say
17 when he lived there, there were packages being -- I'm going to
18 ask, "What other names did you know the defendant to use?"

19 And he's going to say, "Oh, Rudolph Von Waldron."

20 And I'll say, "What did he use the name Rudolph Von
21 Waldron from?"

22 "Oh, he received packages from Bulgaria."

23 Now, what the packages from Bulgaria are, that he was
24 buying -- we have e-mail traffic to show he was buying illegal
25 steroids. Now, I realize the Court has said this is not a drug

1 case, but these are international financial transactions.

2 THE COURT: I'm not letting that in. Forget it.

3 MR. KROMBERG: And that may be, Judge, but when the
4 defense says, oh, this is purely a financial case, and it has
5 nothing to do with terrorism, we are put in the position of
6 saying, oh, here we have a financial transaction, financial
7 transactions under fake names to going -- to commit unlawful
8 activity.

9 THE COURT: Mr. Kromberg, you're inviting reversible
10 error. I will not let that evidence in. Make sure your
11 witnesses know not to get into it. Do not open that door. I
12 will not permit it. All right?

13 MR. KROMBERG: Can we use the fact that he was using
14 fake names to get packages internationally, without going into
15 what was in the packages?

16 THE COURT: No, that's too far back. No, no. All
17 right.

18 All right, is there anything else? What are the
19 exhibit numbers that you're going to be tendering that have the
20 Nazi stuff in it? And I assume they're all in my book?

21 MR. KROMBERG: They are, Judge.

22 THE COURT: All right.

23 MR. KROMBERG: So you've already seen the one from
24 the phone. That is the smokestack one that that CART examiner
25 was talking about.

1 THE COURT: All right.

2 MR. KROMBERG: The -- in the 8 series of exhibits,
3 there are LiveLeak -- we're going to -- we're going to prove
4 that the defendant had a LiveLeak account under the name of
5 Düsselkamp.

6 THE COURT: All right. The 8 series?

7 MR. KROMBERG: Correct, 8-500 to 8-510.

8 THE COURT: Hold on.

9 MR. KROMBERG: And, Your Honor, they're actually not
10 about Nazi stuff other than it's the account in the name of
11 Düsselkamp, and --

12 THE COURT: I'm permitting that in.

13 MR. KROMBERG: Okay. So that's the 8 series. Then
14 the next would be --

15 THE COURT: Well, when you say the 8 series --

16 MR. KROMBERG: So it's 8-500, 8-501, 502. Let's see,
17 503, 504, 505, 507, and 510.

18 THE COURT: Well, the reason why this will be
19 relevant to the case, I'm skimming them very fast, but, I mean,
20 there are references to Islamic types of issues.

21 MR. KROMBERG: Right. These are all the ISIS ones.

22 THE COURT: Yeah.

23 MR. KROMBERG: The only connection to Nazism is the
24 name Düsselkamp.

25 THE COURT: Yep, that certainly is relevant. That

1 comes in.

2 MR. KROMBERG: So after that, there would be 10-230,
3 and the exhibits --

4 THE COURT: All right, hold on a second. I'm sorry,
5 10-230?

6 MR. KROMBERG: 230. These are -- the series of
7 Exhibits 10-230 through 10-252 are items that were found on the
8 defendant's computer media in 2016, and the first 10 or first
9 11 all have to do with the Mufti of Jerusalem, and the Mufti is
10 meeting Hitler and the Mufti recruiting Muslim troops for the
11 SS. I think the Court has seen those before.

12 MR. SMITH: Your Honor, we'd like to object to these
13 on the record.

14 THE COURT: Because of the nature of this case and
15 the argument that there is this crossover between the interest
16 in the white supremacy and Nazism and radical Islam, I'm
17 permitting it over your objection.

18 MR. SMITH: Your Honor, just to be clear, there's two
19 categories in here. The first category, which is 10-30 through
20 10-36, relates to the Mufti, which is this figure that
21 Gartenstein-Ross will try to establish as the missing link
22 between militant Islam and white supremacism. That's 10-230 to
23 10-236.

24 But then if Your Honor looks at, at 10-250 to 10-252,
25 cartoon Jew directing U.S. tank, cartoon Jew directing Colin

1 Powell, Jewish swine, that, Your Honor, is -- there's no
2 argument for relevance in this case and --

3 THE COURT: Well, the linkage is the rabid
4 anti-Semitism. That's definitely a linkage. I'm going to
5 permit it. It's not pretty stuff, and I've warned the jury
6 once and I'll warn them again that they have to use it in the
7 proper way, which is whether or not there was this
8 predisposition to engage in radical Islamic activity,
9 supporting them anyway, so I'm allowing it in.

10 MR. SMITH: I'm not suggesting the Court should look
11 at these images, because they're horrible, but if the Court did
12 look at the images, it would see that there's no -- there's
13 nothing in these about Islam at all. I mean, there's not even
14 a visual connection, whereas if the Court looks at these Mufti
15 pictures, Mufti and Hitler, then there's this visual connection
16 between the Mufti of Jerusalem, who, by the way, is a figure
17 from the 1930s, so how that's related to contemporary militant
18 Islamist is not explained, but at least there's, to put it
19 bluntly, a Muslim in that picture, right?

20 But when it comes to these Jewish swine and cartoon
21 Jew pictures, there's no visual connection whatsoever. It's
22 pure prejudice. If a, if a team of scientists came together to
23 create the most prejudicial Rule 403 image possible in a
24 criminal case, it would be these images: 10-250, 10-251,
25 10-252. It is the purest kind of unfair prejudice you can

1 imagine.

2 THE COURT: I recognize it's tough stuff, but that's
3 the nature of this case, so I'm letting it in. All right.

4 MR. KROMBERG: So, Your Honor, I was going to
5 continue. So that was -- I had mentioned 10-230 through
6 10-240. 10-241 is apparently Muslim women holding a sign that
7 says "God Bless Hitler."

8 10-242 is this individual, Nicholas Skorzeny, who was
9 an SS officer who apparently later converted to Islam when he
10 escaped British jail after World War II is my understanding.
11 250, 251, and 252 are what Mr., Mr. Smith just talked about.

12 After that, please go to 10-700. These are physical
13 items that were found during the search.

14 THE COURT: Hold on. They're not in my book.

15 MR. KROMBERG: 10-700 is not there?

16 THE COURT: Well, not in this book.

17 MR. KROMBERG: Oh.

18 THE COURT: Do you have 10-700 there?

19 THE CLERK: No.

20 THE COURT: All right, 10-700.

21 MR. KROMBERG: 10-700, 701, 702.

22 THE COURT: Well, 700 is the picture of Adolf Hitler
23 in a frame.

24 MR. KROMBERG: 701 is a book that says the SS was
25 Hitler's instrument -- I mean, the title: *The SS: Hitler's*

1 *Instrument of Terror.* 702 are other SS books. We were not
2 going to use 703, the tie tack. We're not going to use 710,
3 the belt buckle.

4 706 is the roster for the Düsselkamp group. 711 is a
5 poster that says, "When I come back" -- Hitler: "When I come
6 back...no more Mr. Nice guy."

7 714 is a flag, not a swastika flag. As I understand
8 it, it was used by neo-Nazis when they weren't using the
9 swastika, but that's the flag that we understand was, I think
10 Mr. McNulty is going to say was hanging in the workout room.

11 THE COURT: Is he going to understand what this flag
12 is?

13 MR. KROMBERG: No, no, no. He's just going to say it
14 was -- Dr. Gartenstein-Ross is going to explain what the flag
15 is, but Mr. McNulty is going to say, "Yes, this is what was
16 hanging there."

17 10-15 is a picture of the locker that just says
18 "Düsselkamp" on it. 10-814 is a prayer list that included
19 Hitler and Skorzeny and the Mufti on it. 10-600 is the book
20 *Hunter*. 10-861 is the book *Serpent's Walk*. 10-862 --

21 THE COURT: Wait, wait. The *Hunter* book I've already
22 said is not coming in.

23 MR. SMITH: Right.

24 THE COURT: All right.

25 MR. KROMBERG: It wasn't coming in through Campbell,

1 but it was found in his house, and Gartenstein-Ross is going to
2 talk about how this is part of the National Alliance neo-Nazi
3 publications. So I understand that Officer Campbell couldn't
4 talk about it, it wasn't his, but -- in any event, "Who Rules
5 America?" is a photo, only we don't actually have the document.
6 And 10-863 is that white power music that Your Honor has seen
7 before.

8 Then there are -- we're going to try to use five of
9 the photos from the DVD that's marked 10-900. And --

10 THE COURT: These are reenactments?

11 MR. KROMBERG: Well, no, they're parties, and they
12 are party scenes, but we don't seem to have any -- we're not
13 using any photos of reenactments. The photos of other
14 gatherings but not reenactments.

15 11-401 is the Israeli flag door mat.

16 MR. SMITH: Your Honor, we object. We don't --

17 THE COURT: I'm sorry?

18 MR. SMITH: The Israeli flag, this is a -- this is a
19 U.S. terrorism prosecution case. Why is an Israeli -- it's
20 just --

21 THE COURT: Because again, the issue of anti-Semitism
22 is the link -- part of the linkage that makes any kind of
23 linkage make any sense between the Nazis and radical Islam.

24 MR. SMITH: But, Your Honor, that's a national flag.
25 This is --

1 THE COURT: I disagree with you on that. I'm going
2 to allow it.

3 Yeah.

4 MR. KROMBERG: And, Judge, the others, the 14 series,
5 there will be --

6 THE COURT: Hold on. Go ahead.

7 MR. KROMBERG: -- three more photos of Young dressed
8 as a Nazi.

9 Those are the ones that were dated January 28, 2006.

10 THE COURT: Which 14? I mean, my --

11 MR. KROMBERG: I'm sorry, 14-112, 113, and 114.

12 THE COURT: Wait a minute, wait a minute. This one
13 only goes up to 105.

14 MR. KROMBERG: I'm sorry?

15 THE COURT: Is there another 14 book?

16 THE CLERK: No.

17 THE COURT: 14- what?

18 MR. KROMBERG: Mr. Vera asked me to pass on that it's
19 volume 7. It's 14-112, 113, and 114.

20 I would note, Judge, that 114 --

21 THE COURT: Yeah.

22 MR. KROMBERG: -- is not a picture of Young, but it
23 was Young's picture of other people at that gathering giving a
24 Heil Hitler salute.

25 THE COURT: Yeah, that's starting to be cumulative

1 and overkill. You don't need both 112 and 113. You're making
2 your point. You don't need to make it ten times. So I'll let
3 you use some discretion, but you can't get these all in, all
4 right?

5 MR. KROMBERG: Okay.

6 THE COURT: They're repetitive.

7 MR. KROMBERG: Then there's 14-134 and 135.

8 THE COURT: All right, hold on.

9 MR. KROMBERG: And these were items that were found
10 on his, the defendant's computer in 2011.

11 MR. SMITH: Again, Your Honor, with respect to 14-10
12 to 135, we object to the insinuation that every anti-Israel
13 object in this case is evidence of predisposition to materially
14 support terrorism. That's an extraordinary statement and
15 theory, Your Honor.

16 THE COURT: Well, I agree that an isolated --

17 MR. SMITH: That is coming close to prosecuting
18 political speech.

19 THE COURT: And you can make that argument to the
20 jury, but I'm going to let -- again, I don't want all of these
21 in. You have to use some discretion. I'm saying this could
22 come in, but we're not going to have --

23 MR. KROMBERG: Right. Well, keep in mind, Judge,
24 that what you heard before was 45 exhibits. Well, it's not 45
25 exhibits. It's about seven photographs and ten graphics, and

1 then there's the stuff about the Mufti, which is ten right
2 there.

3 So yes, there are -- anyway, I also left out from the
4 Facebook, there's a link that Mr. Young linked to the
5 prosecution of another Muslim who was arrested on terrorism
6 charges who had been a Nazi. That guy's name was Emerson
7 Begolly.

8 THE COURT: There's no issue there, no problems with
9 that kind of thing.

10 MR. KROMBERG: I think that is all. If I may ask my
11 colleagues?

12 Anything else?

13 Anyway, Judge, I believe that is it. If not the
14 entire universe, it's virtually the entire universe.

15 THE COURT: As I said, some of it's a bit cumulative,
16 so I'll expect you to pare it down a bit, but the basic subject
17 areas I am permitting in over the defense objection.

18 MR. KROMBERG: Thank you, Your Honor.

19 THE COURT: All right. All right, so we're starting
20 up at nine tomorrow morning. So, Mr. Kromberg, what's your
21 estimate? You will finish tomorrow?

22 MR. KROMBERG: Oh, yes. So as I say, the -- well,
23 one thing that I have not said is there are a number of items
24 that were found during the search that we are going to want to
25 publish, not only these but, but the more Islamic terrorism

1 things like *Inspire* magazine and the *Book of Jihad*.

2 THE COURT: All of that's clearly relevant.

3 MR. KROMBERG: So that's going to take some time to
4 just -- the defense has agreed generally speaking that they are
5 authentic, that they were the ones -- they were items that were
6 found at the house at the time of the search. So it's still
7 going to take some time to do that --

8 THE COURT: All right.

9 MR. KROMBERG: -- but as far as witnesses go,
10 Mr. McNulty is going to be very short; Mr. Menzies is going to
11 be short, maybe equivalent to Mr. Campbell; and I believe that
12 Dr. Gartenstein-Ross is going to take some time because I want
13 to ask him what does this mean and what does that mean and what
14 is the -- in the context, what does this mean? So that might
15 take a couple hours.

16 Special Agent Caslen's summary testimony I don't
17 think is going to be as long because I believe that most
18 everything will have already been talked about.

19 THE COURT: Are all the summary exhibits, to the
20 extent you have any, have those been shared with the defense?

21 MR. KROMBERG: We filed the timeline -- we gave the
22 defense a timeline. It is -- I'm sure there will be changes to
23 it because we don't want to reference things that weren't
24 admitted, but they have the timeline that's more inclusive, and
25 we're going to have to take some things out of it to make sure

1 that we're not referencing anything that was not admitted, but
2 the defense has that.

3 THE COURT: All right.

4 MR. SMITH: One response to the militant Islam
5 documents: If Your Honor looks at the 14 series, 14-101 to
6 14-104, Mr. Kromberg said that -- I believe he's made some
7 statement about all of these documents were -- all of this
8 literature was collected from Mr. Young's home.

9 In fact, I think three of these are not collected
10 from -- three of these *Inspire* magazines were not taken from
11 his home.

12 THE COURT: Well, were they from his backpack or his
13 locker?

14 MR. KROMBERG: They were all from the computer at his
15 home, Judge. There was an additional paper copy that was found
16 during the search in August 2016, but all five issues of
17 *Inspire* magazine came from the computer that was searched in
18 September 2011.

19 MR. SMITH: So the issue here, Your Honor, is whether
20 Gartenstein-Ross is testifying on any issues of this magazine
21 that were not found in Mr. Young's possession. If they were
22 found in Mr. Young's possession, we have no objection. The
23 question is in reviewing his expert report, it seemed that he,
24 he was proposing testimony on issues that were not even found
25 in the defendant's possession, and we would object to that type

1 of document.

2 THE COURT: Well, to the extent he's testifying about
3 *Inspire*, I'm assuming you've shown him the ones that you seized
4 from the defendant's home?

5 MR. KROMBERG: Well, yes.

6 THE COURT: All right.

7 MR. KROMBERG: Those are the ones we showed him, and
8 those are the ones we're going to ask him about.

9 THE COURT: Then I don't think there should be an
10 issue there.

11 MR. SMITH: And we'd just like to clarify that we're
12 not using any music at trial, that, you know, we're not playing
13 any music.

14 MR. KROMBERG: I said before that we wanted to play
15 one video that Mr. Young posted on his Facebook page, and that
16 is the only one --

17 THE COURT: Is it in English or Arabic?

18 MR. KROMBERG: English -- excuse me, I'm sorry.

19 MR. SMITH: Your Honor, we have no objection to that
20 video.

21 THE COURT: Well, wait, there's no objection now. Is
22 it in English or Arabic?

23 MR. KROMBERG: Okay. I think it's got English
24 subtitles. But it's also -- we have, we have a number of
25 videos that were in an earlier version of the exhibit list that

1 we have taken off the exhibit list, and either
2 Dr. Gartenstein-Ross or Special Agent Caslen will describe
3 them, but we're not looking to play any others other than the
4 one that was posted on the Facebook page, and that's a music
5 video. It's about two minutes long, maybe two-and-a-half.

6 I'm passed a note that says, "The Marshals Service
7 wants to know if any weapons are coming in tomorrow."

8 THE COURT: No.

9 MR. KROMBERG: No.

10 THE COURT: That makes it easy, all right? No. All
11 right?

12 All right. We could get this case to the jury on
13 Friday unless, again, I don't know what the defense case is
14 going to look like, if there is one, but -- so I don't want a
15 long holdup for the jury. So one of the things that the
16 government needs to start doing is putting together an index of
17 the exhibits that have been admitted, all right? Because I
18 have found that trials where there's a lot of evidence and the
19 jury has had a couple of days, one of the first questions we
20 get is could we have an index to the exhibits that have been
21 entered?

22 Now, I am very concerned about the defense case
23 because of the strange way in which evidence has been
24 discussed, and here is the problem: You did play video clips.
25 We are not sending to the jury entire tapes and telling the

1 jury: Go to counter hour 2, minute 30, second whatever.

2 MR. SMITH: Your Honor means audio clips, right?

3 THE COURT: The audio clips you have to make sure you
4 have on an easily retrievable disc, the way the government has
5 done it, because it's all sort of clips, and we have to make
6 sure that they match up with what was going on in trial, but
7 otherwise, it can't go to the jury because I'm not having them
8 wandering through these tapes that you've got.

9 So sometimes juries don't want to hear things
10 replayed for them, but I've just -- I've put you on notice that
11 it's got to be done better than it was done during the trial.

12 MR. SMITH: Your Honor, we can put it all on one
13 easily accessible disc, and we can actually provide headphones
14 if necessary for the jury to listen to back there, but as far
15 as the exhibits are concerned, Your Honor has clarified that
16 when we're impeaching the witness with documents, we needn't
17 mark the exhibits if we don't intend to introduce them into
18 evidence.

19 THE COURT: Right. They're not --

20 MR. SMITH: The only reason we had been marking them
21 before was because I think Your Honor said that we should be
22 marking them because the Court was under the impression we
23 intended to introduce the documents.

24 THE COURT: All right. But you're not.

25 MR. SMITH: But we're not, so there's not going to be

1 a confused exhibit scenario. We may have exhibits, but they're
2 not necessarily the documents we were using to impeach. We
3 will provide an exhibit list to the government in due time.

4 So --

5 THE COURT: All right.

6 MR. SMITH: For each impeachment document we intend
7 to introduce as an exhibit.

8 THE COURT: Well, impeachment -- all right. All I'm
9 saying is you'd better get them labeled correctly, and you'd
10 better have a list for the Court and for the government if
11 you're putting on a case where you're putting on exhibits, but
12 I'm mostly concerned about the audio clips because there were
13 not any transcripts for them, and the way they were being
14 retrieved during the trial, as we all know, was difficult
15 because you're giving, you know, a time on a long tape, and
16 your paralegal was having some trouble retrieving them, but
17 that's not the way we ever do it for a jury.

18 So, I mean, they have to be, as the government did
19 it, you know, a nice, easily identifiable this is Exhibit 102,
20 102 is this two-minute clip from a conversation on a particular
21 date.

22 MR. SMITH: We can put it together, Your Honor.

23 THE COURT: All right, that needs to be done. So I
24 don't want to waste -- both sides need to think about, as I
25 said, the exhibit list.

1 And what I require, because I've had this issue come
2 up before in other trials, the exhibit number and a
3 nonargumentative but helpful description of what the exhibit
4 is, all right? And the other side -- each side has to exchange
5 their lists, and I want both sides to sign off on them. In
6 other words, I don't want the defense arguing, oh, the
7 government in describing Government Exhibit 13 was
8 editorializing or trying to argue their case. It has to be a
9 nice, clear description: e-mail conversation, blank date,
10 that's fine.

11 Because again, we want the jury to be able to get to
12 the case without, you know, being here for five days trying to
13 muck through the evidence, because if they get frustrated, they
14 just, you know, will rush to judgment. We don't want that, all
15 right?

16 Are there any other matters we have to take up before
17 tomorrow?

18 MR. KROMBERG: Not from the government.

19 THE COURT: So again, just make sure, counsel, that
20 if you do have witnesses, they're here, all right?

21 All right, we'll recess court until nine tomorrow.

22 (Recess from 6:11 p.m., until 9:00 a.m., December 14, 2017.)

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CERTIFICATE OF THE REPORTER

2

I certify that the foregoing is a correct transcript of
the record of proceedings in the above-entitled matter.

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/s/

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Anneliese J. Thomson

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